

J A N I
A N G L O R U M
F A C I E S N O V A :

OR,
Several Monuments of Antiquity
touching the *Great Councils* of the King-
dom, and the Court of the Kings imme-
diate Tenants and Officers, from the
first of *William* the First, to the forty
ninth of *Henry* the Third, *Reviv'd* and
and *Clear'd*.

Wherein,

Ad. P. 1809.
The sense of the Common-Council of the
Kingdom mentioned in King *John's*
Charter; and of the *Laws Ecclesiasti-*
cal, or Civil, concerning *Clergy-men's*
Voting in *Capital Cases* is submitted to
the judgement of the Learned.

Decipimur specie recti—Hor.

L O N D O N,
Printed for *Thomas Basset* at the George near
St. Dunstan's Church in *Fleet*
street. 1680.

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Jani Anglorum Facies Nova.

THat King *John's* Charter exhibits the full form of our English *Great and most General Councils* in those days; if I may say so, is the *Vulgar Error* of our *Learned Men*; and 'tis that which hath given the only prejudice to the pains of the Judicious Mr. *Petyt*, who, I must say, has laid the Foundation, and sure Rule of understanding the Ancient Records and Histories, which mention the *Great or General Councils*, in his distinctions between the *Curia Regis*; and *Commune*, or *Generale Concilium Regni*, *Barones Regis*, and *Barones Regni*, and the *Servitia* which were paid, or performed by reason of Tenure: And those *Common Prestations*; which *Bracton* mentions, *Sunt etiam quadam Communes prestationes qua Servitia non dicuntur, nec de consuetudine veniunt, nisi cum necessitas intervenerit, vel cum Rex venerit, sicut sunt hidagia, corragia, carvagia; & alia plura de necessitate & consensu Communi totius Regni Introducta*: Which are not called *Services*, nor come from Custom, but are

only

Charges
upon the
Land ac-
cording to
the value
or number
of Acres.

only in case of necessity, or when *the King meets his People*; As *Hidage, Corrage, and Carvage*, and many other things brought in by necessity, and by the *Common Consent of the whole Kingdom*.

This I must observe upon the differences here taken, that 'tis not necessary to the maintaining a real difference, to insist upon it, that none of these words were ever used to signifie what is the natural signification of the other: for Example, *Barones* and *Milites*, are sufficiently distinct in their sence; and yet when but one of the words is used, either of them may, and often does take in the other: But when *Barones, Milites, &c.* are set together, the *Barones* are a Rank of men superior to the ordinary *Milites*; 'tis enough to prove that the differences above mentioned are rightly taken, if according to the subject matter, and circumstances, we can clearly divide the one from the other.

Charta Johannis 17.
Regni, Anno
1215.

Now let us see the words of the *Charter*, and observe whether they are meant of all *General or Common Councils* for making of *Laws*, and *Voluntary Gifts* to the Crown, or only of such as concern'd the *King's Immediate Tenants*.

Nullum Scutagium vel Auxilium Ponam in Regno nostro, nisi per Commune Consilium Regni nostri, nisi ad corpus nostrum redimendum,

dimendum, & ad primogenitum filium nostrum militem faciendum, & ad primogenitam filiam nostram semel Maritandam, & ad hoc non fiet nisi rationabile auxilium. Simili modo fiat de Civitate Londinenſi. Et Civitas Londinenſis habeat omnes antiquas Libertates, & Liberas conſuetudines ſuas, tam per terras, quam per aquas: præterea, volumus & concedimus quod omnes aliæ Civitates, & Burgi, & Ville, & Barones de quinque portibus, & omnes portus, habeant omnes Libertates, & Liberas conſuetudines ſuas, & ad habendum Commune Conſilium Regni, aliter quam in tribus caſibus prædictis. Here the London Edition of Matthew Paris, and that at Tours make a period diſtinct from what follows, and then the Sense is, that except in thoſe three Caſes, wherein the King might take Aid or Eſcuage at the Common Law, without the Conſent of a Common Council, for all other Aids, or Eſcuage, a Common Council ſhould be held; and the City of London, all Cities, Burroughs, Pariſhes, or Townſhips; that is, the Villani their Inhabitants, the Barons, or Free-men of the Five Ports, and all Ports ſhould amongſt other Free Cuſtoms, enjoy their right of being of, or conſtituting the Common Council of the Kingdom. But ſo much is certain, that if theſe, or any beſides the Tenants in Capite came before this

Tiguri, ſola
247.

Charter, and were at the making of it, their Right is preserved to them by it, and is confirmed by the Charter of *Hen. 3. cap. 9.*

*Magna Carta, cap. 9.
2 Inst. fol. 20.*

Civitas Lond. habeat omnes Libertates Antiquas, & consuetudines suas: preterea volumus & concedimus, quod omnes alie Civitates, Burgi, Villa, & Barones de quinque portibus, & omnes alii portus habeant omnes Libertates, & Liberas consuetudines suas.

Titles of Honour, f. 586, & 587.

And for an evidence of what was their Custom and Right, as to the *Great Council* of the *Kingdom*: both these Charters were made to, and in the presence of all the *Clergy, Counts, Barons, and Free-men* of the *Kingdom*. King *Fohns* (as Mr. *Selden* tells us he conceives) was made by the *King*, and his *Barones & liberos homines totius Regni*, as other particulars were of the same time.

But the Record which he cites in the *Margent* puts it out of all doubt, that the Charter was made by them all.

Rot. Claus. 17 Johannis Dorsio m. 21.

Hec est conventio inter Dominum Johannem, Regem Angliæ ex unâ parte, & Robertum Filium Walteri Marefcallum Dei & Sanctæ Ecclesiæ Angliæ, & Ric. Com. de Clare, &c. & alios Comites, & Barones & liberos homines totius Regni ex alterâ parte.

Rot Pat. 17 Johannis pars unica m. 13. n. 3. Ib. m. 23. doro.

And in another Record it is said to be, *Inter nos & Barones & liberos homines Domini*

nii nostri : So that the *liberi homines* of the Kingdom were present ; and who were at the making of the Great Charter of *Hen. 3.* which has been so many times confirmed, it acquaints us at the end.

Pro hac autem donatione & concessione libertatum, & aliarum libertatum in carta de libertatibus forestæ, Arch. Ep. Ab. Pr. Comites, Barones, Milites, liberè tenentes & omnes de Regno nostro dederunt nobis quinto-decimam partem omnium mobilium suorum. Magna Charta cap. 38.

The Charter here mentioned of the Forest had been granted in the Second of *Hen. 3.* as was the Great Charter; the parties to the grant of a Subsidy are the very same : *Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites & liberè tenentes, & omnes de Regno.* Confirmatio magna Chartæ factæ 2. H. 3. in consimili formâ cum magna Charta 9. Hen. 3. (testibus & data excep-

ptis) exemplificata & confirmata 25. Edw. 1. prout Charta de Forestâ. Ex MS contemporanæ statutor. penes Sam. Balduin Equitem auratum & servient. ad legem.

Not to produce here the proof of such General Assemblies from the Conquest downwards to the 49 *H. 3.* I may say upon what I have already shown, that this interpretation of King *Fohn's* Charter, whereby the Tenants *in Capite* are divided from the rest, and made a *Common Council* *Et de Scutagiis assidendis faciendis sum-*

B 3

for

moneri, &c.

for *Eſcuage* only , agrees better with the Records and Hiſtories, than the notion, that they alone compos'd the whole Council of the Kingdom, which can never be proved.

That is
ſuch of
the *Majo-*
res as held
in a *ſocage*.

But I will take the words together, even as *they* who are fond of the conjecture of their being the full Representative Body of the Nation would have it. *Et ad habendum Commune Conſilium Regni de auxiliis aſſidendis, aliter quam in Tribus caſibus prædiſtis, & de Scutagiis aſſidendis ſubmoneri faciemus Arch. Ep. Ab. & Majo- res Barones Regni ſingillatim per literas noſtras. Et præterea faciemus ſubmoneri in generali per Vicecomites & Ballivos noſtros omnes alios qui in capite tenent de nobis ad certum diem, ſcilicet ad terminum Quadragint. dierum ad minus, & ad certum locum in omnibus litteris ſubmonitionis cauſam ſubmonitionis illius exponemus, & ſic factâ ſubmonitione negotium procedat ad diem assignatum, ſecundum conſilium eorum qui præſentes fuerint, quamvis non omnes ſubmoniti venerint.*

Aid upon
Tenants in
Common
Socage.

Here was I grant the form of a Common Council of the Kingdom, to the purpoſes here named, which are for *Aid* and *Eſcuage*: The *Aid* I ſay, and ſhall ſhow, was from thoſe Tenants which held of the King in *Common Socage*, ſuch as held Geldable, or talliable Lands, the *Eſcuage* concern'd

cern'd the Tenants by Knights Service, but both concern'd only the *King's Tenants* in chief, which appears in the very confining the Summons to the *Majores Barones Regni*, and others which held of the King in Capite.

Escuage upon Tenants by Knights Service.

Whereas (1) there were *Majores Barones*, who held not by any Feudal Tenure, that were not oblig'd to attend at the Kings ordinary Courts, and they, with them that were under their Jurisdictions, had their *Common Councils* apart, though all might meet at *General Councils*: So that what was a *Common Council* of the Kingdom to this purpose, was not so indefinitely to all.

2. There were others who were oblig'd, or had right to be of the *Common Council* of the Kingdom, though not upon the accounts mentioned in this Charter.

1. The Norman Prince, to the encouragement of those great men that adventured for his glory, made some of them as little Kings, and gave them the Regal Government of several Counties, in which they with the great men thereof, and the *libere Tenentes* Freeholders, made *Laws* for the benefit of their Inheritances, and the maintaining the peace; and that of *Chester* *constit.* in particular was given to *Hugh Lupus Tenendum sibi & Hæred. ita verè ad gladium, si-* cut ipse Rex tenebat Angliam ad coronam: 247.

Tit. Honor.
1 Edit. p.

See Leice-
ster's Sur-
vey of Che-
shire.

So that he wanted nothing but a Crown to make him King. In a Charter of Count *Hugh's*, of the Foundation of the Monastery of St. *Werbung*, he says: *Ego Comes Hugo, & mei Barones confirmavimus.* And one of his Successors grants to his Barons, *Quod unusquisque eorum Curiam suam habeat liberam de omnibus placitis ad gladium meum pertinentibus.*

20. H. 3. M.
Paris fol.
363. E. 1.
Lond.

And at the Coronation of *H. 3.* which was after this Charter, Earl *Fohn*, another of *William's* Successors, carried St. *Edward's* Sword before the King, as *Matthew Paris* tells us, for a Sign, that he had of right a very extraordinary power: *Comite Cestria gladium Sancti Edwardi qui Curtein dicitur ante Regem bajulante, in signum quod Comes est Palatinus, & Regem si oberret habeat de jure potestatem cohibendi, &c.*

Though this was the chief Count *Palatine*, yet others had their separate Councils, where they made Laws.

Tit. Ho-
nour 1 Ed.
p. 233.

William Fitz-Osborn was made Earl of *Hereford* under *William* the First, of whom *William* of *Malmsbury* says; *Manet in hunc diem in Comitatu ejus apud Herefordum legum quas statuit inconcussa firmitas, ut nullus Miles pro qualicunque commisso plus septem solidis, cum in aliis Provinciis ob parvam occasinulam in transgressione precepti herilis, Viginti vel Viginti Quinque pendantur.*

OF

Of the same nature are Examples in the *Selden, ib.*
 Constitutions of the old Earls of *Cornwal*,
 and the like.

To return to the County *Palatine* of *Che-* *Domesday*
ster, its Count was not *Tent. in Capite* with *in Cheshire*
 the restrictions above taken, *viz.* Subject *saich, Co-*
 to the Feudal Law, and obliged to attend *mestinetCo-*
 once at the Courts as other Tenants, and *mitatum de*
 yet at the *general Councils* he was present. *Rege. See*
 Therefore this Council mention'd in King *Leicester's*
John's Charter, where none but *survey of*
 Tenants in *Capite* (obliged to the ordinary *Cheshire.*
 Incidents of such Tenure) were, was no ge-
 neral Council of the whole Kingdom, as
 our Modern Authors would have, though
 it were for the matters of ordinary Tenure,
 all that were concern'd being at it.

In the Year 1232. King *Hen. 3.* held his *Mat. P. fa:*
Curia or Court at *Winchester*, at *Christmas*, *497. Ed.*
 which was one of the Court days, or rather *London. Anno*
 times of meeting; for it often held several *1232. 17^o.*
 days; and therefore when that at *Tewksbury*, *H. 3.*
 in King *John's* reign, held but a day, it is *M. P.*
 specially taken notice of. *An. 1205.*
7^o. Johan-
nis.

Soon after King *Henry's* Christmas *Mat. Par.*
 Court, he Summons all the *Magnates* of *ed. Tig. f.*
England ad Colloquium; when they meet, *359.*
 because he was greatly in debt by reason *Nequi mag-*
 of his Wars; he demands, *Auxilium ab* *nates viz.*
omnibus generaliter. *Comes, Baro,*
Miles sena-
liqua alia
notabilis

Quo audito Comes Cestria Ranulphus pro *persona Rot.*
Magnatibus *Claus. 3 E. 2.*
m. 16. dot.

M.P.f.359. *Magnatibus Regni loquens respondit, quod Comites Barones ac Milites qui de eo tenebant in Capite cum ipso erant corporaliter presentes, & pecuniam suam ita inaniter effuderunt, quod inde pauperes omnes recesserunt, unde Regi de jure auxilium non debebant, et sic petita licentiâ omnes recesserunt.*

Nota, This shews that the Tenants in Capite were not all the Council, because they in particular are taken notice of amongst them which came to that Council.

The Earl of Chester was not to attend the King in his Wars, nor to pay escuage in lieu of military service, because all his Tenure was to keep to the defence of the Marches.

Here was the Earl of Chester, this being a Summons to a *General Assembly*; but when the King asked money for his expences in the Wars, he tells him in the Name of all the *Laity*, that those which held of him in *Capite* (which is as much as to say he was none of them) served him in their Persons, and at their own charge; therefore they beg'd leave to be gone, if the King had no other business with them, for no aid was due: So that it seems they look'd upon *Auxilium* to be something in lieu of the service which the Kings Tenant was to perform. That this concern'd the Kings Tenants in *Capite* by K^ts service, and no others (except the inferior talliable Tenants;) & they that were then assembled, being the *Great Council* of the Kingdom, took upon them to Umpire between the King and *his Tenants*, and to tell him that he had no pretence for aid from them, for they had perform'd their services due. If only Tenants in Chief, by Knights service, are here intended by Tenants in *Capite*, they only most commonly attending

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attending the King in Person, though sometimes all Tenants whatever, were required to attend ; and so in King *John's* Charter, the Summons be taken, to be only of such Tenants in Chief, then the aid there is meant only of such as comes from them ; but that takes not in all that are within the meaning of King *John's* Charter, it adding *simili modo fiat de Civit. Lond.* which paid a *Socage Aid* as I shall shew : But for *Chester*, even at those times when aids were granted by more than the King's Tenants, the *Earls*, *Barons*, and *Freeholders* of *Chester* gave by themselves. Prince *Edward*, afterward King *Edward* the First, was in the 44th of H. 3. Count Palat. of *Chester*, and he had his *Common Council* there, wherein he consulted for the good of his Palatinate apart, from the great Council of the Nation : *Barones & Milites Cestrenses & quamplures alii ad Rot. Pat. 44 H. 3. M. 1. sum. Domini Edw. coram ipso Domino Edw. apud Shorlswick, super statum terr. illius Domini Edw. Consul. & propon. qua hab. proponenda.* Nay so careful were they that the Kings Feudal Jurisdiction should not interfere with the *Earls* or other Lords there, that they insisted upon it as their *Prerogative*, so say many Records, that if one held by Knights service of the King, and of any Lord within the Palatinate also, the Heir should be in Ward to the Lord there, not to

to the King ; and so by consequence of the other Incidents and attendance at the Kings Courts; so that those of the County of Chester, could be no part of this Common Council, which therefore was not general.

In an Inquisition taken 22 Edw. 1. Dicunt
 22^o. Ed. 1. *quod a tempore quo non extat memoria, tam*
 n. 45. sub *temporibus Comitum Cestr. quam temporibus*
 Custod. Ca- *Regis Hen. Patris Domini Regis qui nunc est,*
 merar in *ac tempore ipsius Domini Edw. Regis nunc se-*
 Scaccario. *cundum consuetudinem per quandam preroga-*
tivam hætenus in Com. Cestr. optentam & u-
sitatam Domini feodorum in Com. prædict.
post mortem tenentium suorum custodiam
terrarum & tenement. quæ de eis tenentur
per servitium militare usque ad legit. ætat.
hæred. hujusm. ten. licet iidem tenentes ali-
as terr. & ten. in Com. præd. vel alibi de Do-
mino Rege tenuerunt in Capite semper huc
usque habuerunt, & habere consueverunt, &c.

King Edward the First, sends Arch. Ep. Ab.
 Rot. Pat. 2. *Pri. Com. Bar Mil. & omnibus aliis fidelibus*
 Ed. 1. M. 6. *suis de Com. Cestrie, and desires them that*
since the Prelati, Comites, Barones & alii de
Regno, which one would think took in the
whole Kingdom, had given him the fifteenth
part of their moveables; they would do the
like, and we find a Record of their giving
a part from the rest of the Kingdom.

Cum probi homines & Communitas Comi-
 Rot. Pat. 20. *tatus Cestrie sicut cæteri de Regno nostra 15m.*
 Ed. 1. M. 6. *omnium*

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omnium bonorum suorum nobis concesserunt gratiosè.

So that these were then no part of the *commune concilium Regni* within this Charter, and no man can shew that they were divided since the time of *William* the First.

2. There were others who were obliged, or had right to be of the *Common-Council* of the *Kingdom*, though not upon the accounts mentioned in this Charter; which if it appear, then this was not the only *Common Council* of the *Kingdom*, or the full form of it, because there were *Common Councils* wherein were other things treated of, and other Persons present. For this it is very observable, there is nothing but Aid and Ecuage mentioned, nothing of Advice or Authority given in the making of Laws, which were ever enacted with great solemnity, and all the *Proprietors* even of *Palatine Counties* were present in Person or Legal Representation, when ever a *general* or *universal Law* was made that bound the *Kingdom*. But to wave this at present, I shall give one instance from Records, that others were to come or had right, besides they that came upon the account of Tenure as here mentioned.

The Pope writes to King *Hen. 3.* in behalf of some of his great men, who had complained to the Pope that he had excluded

*Bundell
literar. in
Turri Lon-
don.
An. 8. H 3.*

Ne qui Ma-
gnates vir-
Comes, Ba-
ro, Miles
feu aliqua
alia nota-
bilis perso-
na, &c. Rot.
Clauſ. 3 E.
2. m. 16.
dor.

ded them from his Councils. The King answers that they had withdrawn themselves, and that *Falcatius de Brent* the chief of them, was by the advice of the *Magnates totius Regni*, all the great men of the Kingdom, called and admonished to receive the Judgment of the *King's Court*, according to the Law of the Land. *Cum aliàs teneatur ratione possessionum magnarum, & officii maximi quod habuit in Curiâ nostrâ, ad nos in consiliis nostris venire non vocatus.*

Although besides the obligation to obey the King's Summons, he was bound by reason of great Possessions, and a very considerable Place at Court to come to the King's Councils, though not called; that is, when ever it was known that a Council was to meet, which might have been done by an Indiction of an Assembly without sending to any body.

This shews very plainly that there were others to come to the *Great Councils*, besides those that were to come to those Common Councils, and other occasions for meeting; for confine it to the persons and causes here specified they were to have Summons, the *Majores* Special, the *Minores* General by the Sheriffs, and 40 days notice; whereas the King said, and could not be ignorant of King *Fohn's* Charter, which was but 10 years before, that *Falcatius* was

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was to come without Summons.

But there is a further irrefragable Argument in the Negative, viz. that this *Commune Consilium Regni*, was not the *Great Council of the Nation*: And that is the Judgment of a whole Parliament in the Fortieth of *Edw. the Third*, above three hundred years ago, when 'tis probable that they had as clear a knowledge of the Laws, Customs, and Publick Acts in King *Fohn's* time, as we have of what past in the Reign of *Henry the Eighth*. It appears by the History that King *Fohn* had resigned his Crown in such a Council as this here, it was *Communi Consilio Baronum nostrorum*, and yet the *Prelats, Dukes, Counts, Barons and Commons*, upon full deliberation in Parliament, resolve that the resignation was void, being contrary to the King's Oath, in that 'twas *Sanz Leur assent*, without their Assent: And the King could not bring the Realm in Subjection, *Sanz assent de eux*.

Rot. Parl.

40 Ed. 3.

n. 7, 8.

Matt. Par.

p. 236.

If it had been in the *Great Council* of the *Kingdom*, though it was not possible for the parties then at Council to have been assenting personally to King *Fohn's* Resignation; yet they had assented by a Natural as well as Legal Representative, as has been long since shewn by the Judicious Mr. *Hooker*.

To

Hooker Ec-
cles. lib. fol.
29.

To be commanded we do consent; when the Society whereof we are part, hath at any time before consented without revoking the same afterwards by the like universal Agreement: Wherefore as any man's Deed past is good as long as himself continueth; So the Act of a publick Society of men done five hundred years past sithence standeth as theirs, who presently are of the same Societies, because Corporations are immortal. That King Fohn resigned his Crown, without a Parliamentary Consent, is to be taken for granted after this solemn determination; the only question is, whether 'twas with the consent of his Curia, or such a *Commune Consilium Regni*, as his Charter sets forth.

Matt. Paris
Ann. 1212.
14 Johan-
nis.

The King had summoned his Military Council to *Dover*, in the 14 of his Reign, as in the third he had to *Portsmouth*; they which were summoned to the last are specified under the Denominations of *Comites, Barones & Omnes qui Militare Servitium ei debebant*, this was to have them pass the Seas with him, and they that stay'd at home, gave him Escuage. *Veniente autem die statuto, multi impetratâ licentiâ dant Regi de quolibet Scuto duas Marcas Argenti.* Here was a Military Council, and a Military Aid given; they that were with him at *Dover* are not particularly described by *Matthew Paris*, but he tells us, *Convene-*

runt

rant Rex Anglorum, & Pandulphus cum
 proceribus Regni apud domum Militum,
 Templi juxta Doveram 15. die Maii, ubi Matt. Par.
 idem Rex juxta quod Romæ fuerat sententia-
 tum, resignavit coronam suam cum Regnis
 Angliæ, &c.

This was *Communi Consilio Baronum no-* Matt. Par.
strorum; as *Matt. Paris* and *Knyghton* ren- Knyghton.
 der the Charter.

As *Matt. Westminster* ad. optimum con- Matt. West.
silium Baronum nostrorum; the last gives us fol. 271.
 the form of the Summons, which shews
 who were the *Commune Consilium Regni*
 here, the *Proceres Regni* mention'd in *Matt.*
Paris. Omnes sua ditionis Homines, viz. Du- Matt. West.
ces, Comites & Barones, Milites & Servien- fol. 271.
tes cum equis & armis: So that here was
 a Military Summons to them that ought
 to come, because of Services, which is ex-
 plained by the Summons to *Dover*, which
 was to *Omnes qui militare servitium ei de-*
bebant, if he thought all were bound to
 that Service, and summoned all, still the
 Parliaments Judgment satisfies us, either
 that the rest were not obliged, and there-
 fore came not, or if they came as they of-
 ten did in *Hen. 3.* time; upon the like sum-
 mons, as appears by many Records of that
 Age, that the King's Tenants only assented
 to the Resignation.

Either way it resolves into this, that a
 Council

Council of the King's *Tenants*, was not a Council that could lay any Obligation upon, or pretend to a *Representation* of the whole *Kingdom*.

Indeed I meet with a MS. wrote I suppose in the time of *Hen. 6.* above two hundred years past, the Author of which (being induced by all the Records, or Histories, which had then appeared to him, to believe that nothing could be of Universal Obligation, even in King *Fohn's* time, but what was assented to as universally as Laws were when he wrote) gives us King *Fohn's* Charter of Resignation in a very full and complete form, as if it had been—

MS. Cod. ex
Bib. Dom.
wild nuper
defunct.

Per consilium & assensum nostrorum Procerum Arch. Ep. Ab. Prior. Comit. Baronum, Militum, Liberorum hominum, & omnium fidelium nostrorum: Whereby if his Authority could stand in competition with the *Great Councils*, he would remove the Objection that had been long before made, which was, that this *Resignation* made in the ordinary *Curia*, was not in a *Legal Representative* of the *Kingdom*.

It seems that both the *Parliament* and this Author were then satisfied that the King's Feudal Peers or Tenants in Chief could not make a *Commune Consilium Regni*, as a full Parliament in King *Fohn's* time.

Besides it is worthy of consideration, that

that if none but *Tenants in Capite* were of the *Common Council of the Kingdom* at this time, then all the Abbots, Priors, and other Dignified Clergy, who held not of the King in *Chief*, and yet were very numerous, together with the whole *body* of the inferiour *Clergy*, were entirely excluded from, and never admitted to this *Common Council* any more than the rest of the Layty, from the time of *William* the First, to the forty ninth of *Henry* the Third.

This I conceive is enough in the Negative, that the King's Tenants could not within the meaning of this Charter make the *Common* or *General Council of the Nation*: If it be said that they made the Common or ordinary Council for matters of Tenure or ordinary Justice, I shall not oppose it, in which sense they might be said to be a *Commune Consilium Regni*, but that sense cannot be here intended, because the words are *Commune Consilium de auxiliis assidendis aliter quam, &c. & de scutagiis, &c.* So that 'tis manifestly no more than a *Common Council* for the assessing of *Aids* and *Escuage*; and if I shew that the *Aids* and *Escuage* concern'd the King's Tenants only, then the *Common Council* of the Kingdom dwindles into a *Common Council* of the King's Tenants for matters concerning their Tenure.

If no instance can be shewn from Record or History of *Auxilia* or Aids raised by the Kings of *England* without more general consent, except such as were raised of his immediate *Tenants*; and those cases wherein the King here reserved to himself a power of charging with Aid or Escuage without consent of a Common Council concern'd his Tenants only, and more than those Tenants were parties or privies to this Charter, it must needs be that the other cases wherein the consent of a Common Council was requisite, concerned Tenants only, since only their consent is required, and they only stood in need of this clause of the Charter.

That two of the three above mentioned (*viz.*) Aid to make the Eldest Son a Knight, and to marry the Eldest Daughter were incident to Tenure, appears by the *Stat. West. 1. Cap. 36.* which ascertains the Aid which before as that declares was not reasonable, and shews upon whom it lay (*viz.*) Tenants by Knights Service and Socage Tenants, and there is no doubt, but if the King might by Law have required Aid, in those two cases he might have done it, in the third for the redemption of his own body, which was a service a King of *England*, especially after the loss of *Normandy*, which often occasioned the exposing

sing their Sacred Persons, so little stood in need of and was likely so rarely to happen, that there was no need to redress, by the Statute of *West.* any grievance arising from thence.

Note, a Common Lord had Aid in the like case by King John's Charter.

Though the Statute here spoken of be only in the affirmative, what Tenants by these Services shall pay; Yet this has been taken to be pregnant with a Negative as to all others not mentioned. So 11 Hen. 4. fol. 32. *Nul grand sergeanty ne nul autre tenure mes seulement ceux queux teigne, in Chevalry & en Socage ne paieront Aid a file marrier pour ceo Stat. de West. 1. cap. 36. voet que ceux deux tenures serroint charges & ne parle de autres tenures*; that is, none but Tenants by Knights Service and Socage are liable to these *Auxilia*. But over and above these incidents, whether with consent of Tenants, or advice of other Council, or meerly of their arbitrary motion Kings used to raise money upon their Tenants, and these were called *Auxilia*, which is the word used in this Charter of King *John*, the leavy upon Tenants by Knights Service was called *Escuage*, because of their *Servitium Scuti*, Service of the Shield, that upon Tenants of their Demesns in Common Socage, Tallage, which is a word that might be of a large extent, as it signifies a cutting off from the

Estate, but being it was never used as an imposition with pretence of Duty but upon his Tenants, and that which was raised upon Tenants by Knights Service had its proper name, therefore this has generally been applied to the payments of Socage Tenants, either as ordinary Services, that is, upon the ordinary occasions wherein 'twas of course raised by the King, or upon extraordinary occasions and necessities, which required advice.

William I.

Seldeni ad
Fadmer.
& nota &
Specilegium
fol. 190.

Yet as an exaction or unjust payment it has been taken in the largest sence to reach to all Tenants and others; as in *William the First* his Emendations or Charter of Liberties, the 1. *Magna Charta*.

Volumus etiam ac firmiter precipimus & concedimus, ut omnes liberi homines totius Monarchiæ Regni nostri prædicti, habeant & teneant terras suas & possessiones suas bene & in pace liberas ab omni exactione injustâ & ab omni Tallagio, ita quod nihil ab eis exigatur vel capiatur nisi servitium suum liberum quod de jure nobis facere tenentur, & prout statutum est eis & illis à nobis concessum jure hereditario in perpetuum, per Commune Concilium totius Regni nostri prædicti.

In a General Council of the whole Kingdom it had been settled what the King should have of his Tenants by reason of Tenure, and what Free Services he should have

have even of those Freemen which were not his Tenants.

Thus by the Oath of Fealty or Allegiance and by the *Law of Association*, or the revival of the Frank Pledges, every Freeman was tied to Service for the *Defence* of the *Peace* and *Dignity* of the *Crown* and *Kingdom*, and by the Association more particularly to maintain Right and Justice; for all which they were to be *conjurati fratres* sworn Brethren.

ib. cap. 52, 59.

Et ad iudicium rectum & iustitiam constanter omnibus modis pro posse suo sine dolo & sine dilatione faciend. ib.

And besides this there were Services belonging to the Crown, which lay upon the Lands of Freemen; To instance in Treasure, Trove and Royal Mines, *Thesauri de terris Regis sunt nisi in Ecclesiâ vel Cæmeterio inveniantur.*

Knyghton, fol. 2358. Leges Will. 1.

Aurum Regis est & medietas argenti & medietas ubi inventum fuerit, quodcumque ipsa Ecclesia fuerit dives vel pauper.

And this was as properly a Service as the Roman *servitus prædiorum*, which consisted in something to be suffered upon Lands or Houses.

Servitutes rusticorum prædiorum sunt hæc, inter, actus, via, aquæ-

ductus. Digest. lib. 8. tit. 3. Servitutum non ea natura est ut aliquid faciat, sed ut aliquid patiat, vel non faciat, ib. fol. 215.

But he would not exact or take from them by force any kind of Tallage.

Therefore the Historian tells us, that in the year 1084. *De unaquaque hidâ per Angliam VI. solidos accepit*, he accepted as a vo-

Sim Dunelm. fol. 212. 1084. 14 Will. 1.

luntary gift 6 s. of every hide of Land throughout the Kingdom, if 'twas without consent, 'twas against his own Charter, and so illegal.

But to proceed to shew the nature of the *Auxilia*, which came from Tenants in the Reign of some of his Successors, either ordinary as common incidents or extraordinary.

2. Inst. l.
232.

By the Common Law, as the Lord Cook observes upon the Statute of *West. 1. cap. 36.* to every Tenure by *Knights Service* and *Socage*, there were three Aids of money called in Law *Auxilia*, incident and implied without special reservation or mention (that is to say) *relief* when the *Heir* was of full Age, *Aid pur fair fitz Chevalier*, & *Aid pur file marrier*.

When the Lord Cook tells us that these Services were incident to *Socage* Tenures, as well as *Knights Service* it must be intended, when it is spoke of the Services of the Tenants of the King's Ancient Demesne only, for they that held of the King by certain Rent, which was *Socage* Tenure, were not subject to the payment of the *Tallage*, except their Land were of the Ancient Demesne of the Crown.

And therefore *Robert de Vere* Earl of *Oxford*, who held a Mannor of the Crown by a certain Rent, which to be sure was not

Knights

Knights Service, pleads that he held the Mannor with the Appurtenances, per Servitium Decem Librarum Regi, ad Scaccarium annuatim reddendum pro omni Servitio, & Regidedit intelligi quod idem Manner non antiqua dominico Corona Regis Angliæ nec est de aliquibus temporibus retroactis in Tallage per Progenitor. Regis Angliæ in dominicis suis assessis consuevit talliari.

Upon search made he and his Tenants are freed from Tallage.

So the King declares that he will not have Aid, that is Tallage for marrying his Eldest Daughter of any Clergy-men that hold in Frank-Almaign or Socage, which must be taken in the same sence with the former.

And before this *Walterus de Esseleg* held a Mannor, ad feodi firmam, that is at a certain Rent of the gift of *Hen. 2.* and was never afterwards talliated, *quum Prædecessores nostri Reges Angliæ & nos talliari fecimus Dominica nostra* (it seems though the Land had been of Ancient Demeasne, yet it was severed by the Purchase.)

This Tallage was called *Auxilium* in the Record. *De consilio nostro provisum est quod auxilium efficax assideri faciamus in omnibus burgis & dominicis nostris.*

Yet the City of London being charged with a Tallage, the Common Council dispute

Inter brevia directa Baron. de term. Mich. 32

Ed. 1. M. 4. dorso penes Rem. Regis in Scaccario.

The same Plea for the Earl of Gloucester and Hereford allowed, ib. M. 5.

Inter brevia directa Baron. de term. Hill. 33 Ed. 1. penes

Rem. Domini Thes. in Scaccario.

Inter Communia de term Mich. 31 Hen. 3. penes Rem.

Domini Regis in Scaccario.

Rot. Claus. 11 Hen. 3. M. 19.

De term.
Hill. 39 H.
3. penes
Rem. Regis
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rio.

pute whether it were *Tallagium* or *Auxilium* which is there meant of a voluntary Aid, not due upon the account of any of their houses being of the Kings demesne, though indeed 'tis then shewn that they had several times before been talliated.

This explains that part of the Charter, *simili modo fiat de Civitate Londinensi*, that is, as in all cases besides those excepted, *Escuage* or *Tallage* should not be raised but by a *Common Council* of the *Kingdom*, that is, of all the persons concern'd to pay: So for the City of *London*, unless the Aid were ordered in a *Common Council*, wherein they and all other Tenants in Chief were assembled, none should be laid upon any Citizens, but by the consent of their own *Common Council*; and if the Ordinance were only in general terms, that all the Kings Demesnes should be talliated, the proportions payable there should be agreed by the *Common Council* of the City, according to that Record, 11 Hen. 3. *Assedimus auxilium efficax in Civitati nostra London. Ita quod singulos tam Majores quam Minores de voluntate Omnium Baronum nostrorum Civitatis ejusdem per se talliavimus. Et ideo providimus simile auxilium per omnes Civitates nostras, Burgos & dominica nostra assidere.*

Nota.

This *per se talliavimus* was a talliating
per

per Capita, for when the Common Council refused to give such a sum in gross, as the King demanded, then the King was put to have it collected of every Head, that is, according to the faculty of every Socage Tenant of his Demeasyn, as appears by the Record of 39 Hen. 3.

*Supra inter
Communia
de Thm.
Mich. penes
Rem. Regis.*

Whereas by this Charter the King might take Escuage or Tallage in three cases without the consent of the Tenants, but confin'd to reasonable, that is, *secundum facultates*, or *salvo contenemento*, and in those cases wherein their consent was required, things were carried by the Majority of voyces amongst them that were present upon his Summons, which sometimes were very few; as when he held his Court at *Westminster* in the fifteenth of his Reign on Christmas the chief time, 'twas *cum paucis admodum Militum Comitatu*, there arose a very great inconvenience, and a few Tenants called together at a time, when the rest could not attend, as in Harvest, or the like, might ruine the rest; therefore this seperate Court of Tenants is wholly taken away in the Reign of *Edward the First*, and he promises that no Tallage or Aid (without any reservation) should be leavied for the future, without the consent of a *full settled Parliament*, not that it was incumbent upon all that came

*M. P. fol.
224. Ed.
Tig.*

came to Parliament to pay either Tallage or Escuage; but as they were the Great Council of the Nation they should advise him, when, or in what proportion to talliate his Demeasns, or lay Escuage upon his Tenants by Knights Service: And when the King's Tenants paid Escuage by Authority of *Parliament*, the Tenants by Knights Service of inferiour Lords, were obliged to pay to their Lords, *Lit. Sect.* 100. the Statute is thus, *Nullum tallagium vel auxilium per nos vel heredes nostros in Regno nostro ponatur seu levetur sine voluntate & assensu Arch. Ep. Comitum, Baronum, Militum, Burgensium & aliorum liberorum hominum de Regno nostro.*

34 Ed. 1.
cap. 1. Coke
2. Inst. 532.

Pursuant to this the very same year is a Record of a Summons for a Parliament to consider of an Aid to make his Eldest Son Knight, for which before he need not have consulted his Parliament, nor the Council of the Tenants; *de jure Corona nostra in hujusmodi casu auxilium fieri nobis debet*, says the Record, and yet he had tied up his hands from raising it without consent of Parliament.

Rot. Claus.
34 Ed. 1.
M. 16. dor.
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However King *John* had in some measure redressed their grievance, giving them assurance that there should always be the general consent of Tenants for what was not payable of right and custom, without any

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any consent of theirs, and for the assessing those sums to which consent was made necessary, there should be a convenient notice that none might complain of the injustice of the charge.

25 Ed. 1.
cap. 6. In
this part
declarative of the
Law, as by
King
John's
Charters

But all these things so manifestly relate to *Tenure*, both the cases excepted and the cases provided for, that no other *sense* can be *tolerable*, for where the King reserves three incidents to *Tenure*, and the particulars within the provision are appendant to *Tenure*, and none but Tenants are mentioned, shall we believe that something Foreign is intended by the very same words? though we may well believe that all Aids whatever were intended by the Statute of *Edw. 1.* because the consent of all People, Tenants, and others is required.

Thus far I think I am warranted by very good Authorities; I take leave to observe farther, that it should seem that before this Charter the King might have charged his geldable or talliable Lands, that is, those Lands which were held of his Demeasns in Socage at his own discretion, but could not charge them that held by Knights Service without their consent, and so this part take it, barely to the consenting is for the advantage and relief of the Socage Tenants only. The Charter of *Henry the First*, which exempts the King's Tenants

nants by Knights Service, *ab omnibus geldis*, that is, tribute or forced payments beyond ordinary Services, leaves the King a Power of charging his other Tenants by meaner Services, though not those which held by Serjeanty, *pro omni servitio*.

Carta, Hen.

2.

Militibus qui per loricat terras suas deserviunt terras dominicarum carucarum suarum quietas ab omnibus geldis & ab omni opere proprio dono meo concedo, ut sicut tam magno gravamine alleviati sunt, ita equis & armis se bene instruant, ut apti sint & parati ad servitium suum & ad defensionem Regni. But then as the consent is qualified upon such notice and summons to a certain place; herein the Tenants by Knights Service are eased in relation to part of their Service.

They were obliged to attend the King's Court, either in his Wars, his administration of Justice, or for the assessing of Escheuage upon those that made default in their Personal Services; for the first there could not be any time of summons or place of attendance ascertained, because occasion and necessity was to determine that; for the second, they could not claim it as a privilege, the administration of Justice being within the King's Ordinary Power, and his Ministers and Justices were sufficient assistants. But in the last there was a grievance in which 'twas proper for the King's

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King's extraordinary Justice to relieve them. *Et ad habendum Commune Consilium Regni de scutagiis assidendis*, for the assessing of Escuage, which was part of the work of the *Curia*, they should be summoned, as is therby provided.

Even before the Normans coming the Kings used to celebrate Feast-days with great solemnity, and at those days they chose *habere colloquium*, to consult with their People: So King *Eldred* summoned all the *Magnates* of the Kingdom to meet him at *London* on our Lady-day. *In festo Nativitatis B. Mariae universi Magnates Regni per Regium Edictum summoniti, &c.* *Londoniis convenerunt ad tractandum de negotiis publicis totius Regni*; so King *Edgar* had a Great Assembly, and called it *Curiam suam at Christmas*.

Cum in natali Dominico omnes Majores totius Regni mei tam Ecclesiastica Personae quam seculares ad Curiam meam celebra-
da mecum festivitatis gratia convenissent
coram totâ Curiâ meâ corroboravi.

That the *Curia Regis* then consisted not of the King's Tenants only: I could shew more particularly by a discourse of the Feudal Law, and of what prevalence it was here before the Normans time: But I think there is enough to this purpose here from one Piece of Antiquity, which shews

Anno 948.
vita Al-
fredi, fol.
124.

Ne qui Ma-
gnates viz.
Comes, Ba-
ro, Miles
sui aliqua
alia notabi-
lis persona,
&c. Rot.

Clous. 3. E.
2. M. 16. d.

Carta Ed-
gari Re-
gis ex Re-
gistro de
Ramsay in
Scaccario
penes Rem.
Regis, fol.
336.

shews what in Ancient time made a *Churl* or *Pesant* become a *Theyn* or *Noble*, and that so Anciently, that, in a Saxon MS. supposed to be wrote in the Saxon time, it is spoke of as antiquated.

That was five hides of his own Land, a Church and a Kitchin, a Bell-house and a Burrough-gate, with a Seat and any distinct Office in the Kings Court: This Churle is in an Ancient MS. cited by Mr. *Selden* called *Villanus*; so that if a man were not Free-born if he could make such an acquisition he became *ipso facto*, a *Thane*, a *Free-man*, as they were often used the one for the other, which I think is easily to be collected from several places in Doomsday Book, and as at that time such circumstances with a place in the King's Court made a *Thane* or *Free-man*, so a *Thane* or *Freeman* had a place in the Great Court, as we see *Edgar's Curia* had all the *Majores totius Regni*, without any qualification from Tenure. But this is to be observed that this being spoke of as antiquated, and that the People and Laws were in reputation when this was the usage, there is a strong presumption from hence, that since that time a less matter than five hides of Land, a Church, &c. gave a place in the King's Court when Nobility was cheaper, and so the People, the Nobles of less reputation.

The

*Thani autem
appellatio-
ne, viri in-
terdum no-
biles inter-
dum libe-
re con-
ditionis
homines,
interdum
Magistra-
tus, atque
sepenumeri
ministri
notantur,
Glos. ad fi-
nem Lamb.
Archæono-
mia.
Vide Hack-
well's An-
cient Cu-
stoms of
England, p.
97.*

The Normans followed not only the Law but the decent Customs and Ceremonies of the former Government, though not directly yet by way of resemblance.

And whereas the *Saxon* Kings celebrated their Courts often on great Feast days before all their People upon publick notice, King *William* erects Tenures, whereby all that he had obliged by his gifts, except such as out of special favour were to do some small thing, *pro omni servitio*, should make a little Court or Council by themselves either *Military* (if occasion were) or *Judicial* in matters belonging to their feud.

And by *Henry* the Third's time, if not *Henry* the Second's, it took in all, or most matters of ordinary Justice; whereas before, its business was confined to the Controversies arising between the King's immediate Tenants, other Suits, especially about Lands, were settled in the Counties or Hundreds, or in particular Lords Courts, as appears by the Charter of *Henry* the First, *de Comitatu & Hundredis tenendis*.

Henricus Rex Anglorum Sampsoni Episcopo & Ursoni de Abecot & omnibus Baronibus Francis & Anglicis de Wircestrescira, salutem: sciatis quod concedo & precipio ut à modo Comitatus mei & Hundreda in illis locis & eisdem terminis sedeant sicut sedebunt in tempore Regis Edw. & non aliter.

D

Ego

*Spilm. Glof.
far. de Hundreda.*

enim quando voluero faciam ea satis
summoneri propter mea dominica neces-
saria ad voluntatem meam.

I cannot here omit the plain observati-
on that *dominica necessaria*, cannot be
meant otherwise than of the King's own
business; for his necessary Demeasns
were nonsense, therefore the sense is, that
as often as he had occasion, he would give
them, that is, all the Counties and Hun-
dreds, sufficient notice for attending him;
so that here is a clear description of the na-
ture of his *Great Councils*, nay, and of St.
Edward's too, in that when he says, they
shall sit no otherwise than they had done
in St. *Edward's* time, he adds; For when
I have a mind to it, I will cause them to be
sufficiently summoned to meet upon my ne-
cessary occasions, of which, I will be *fudge*,
that is, so it was in King *Edward's* time, and
indeed so it appears in the Body of his
Laws recited in the Fourth of *William* the
First, where 'tis enacted that Tythes shall
be payd of Bees, we are there told with
what solemnity the Law passed, *Concessa*
sunt à Rege, Baronibus, & Populo.
So whereas King *Ethelwolf* Father to the
Illustrious King *Alfred* had in the year 855
or 854 granted to the Church the Tythe of
his own Demeasns. *Rex Decimas Ecclesiarum*
concessit ex omnibus suis terris sive Villis
Regiis

Vide Lam-
bart. de
Priscis Le-
gibus.

In vita Al-
fredi, fol.

Regiis, about ten years afterwards the Tythes were settled all over the Kingdom by a general consent, *totâ regione cum consensu Nobilium & totius populi*.

By the *Populus* is not to be intended all People whatsoever, for they who were not *Freeholders* were not *People* of the Land; were no *Cives*, and were not properly a part of any Hundred or County, for they were made up of the *Free Pledges*, the *Freeholders*, Masters of the several Families, answering for one another by Tens, Ten Tens, or Tythings at first making an *Hundred Court*, and more or fewer Hundreds (according to the first division or increase) a *County*, and for the clear understanding the general Words, as *Principes*, *Thaini*, *Barones*, *Proceres*, *Baronagium*, *Baronagium Regni*, or the like, relating to the *Great Councils* of the *Kingdom* before and since the *Norman* acquisition, we find by this Charter of *Henry the First*, that the *Counties* and *Hundreds*, that is, the men which composed those *Courts* were upon sufficient notice to attend upon the King's business, that is, constitute the *Councils*, and therefore *Simeon* of *Durham* very properly says of the *Great Council*, *Contilio totius Angliæ adunato*, the same with what *Eadmerus* says of the *Council* of *Pinnedene* in the First *William's* time, *adunatis primoribus*

D 2

ribus dicto Regio.

Sym. Durham.
nelm. fol.
243. Anno
1121.
So. Mat.
West. f. 352.
of the 37
Hen. 3.
Adunato
magno Parlamento
dicto Regio.

Ead. l. 1. fol. 9. *ribus & probis viris non solum de Comitatu Cantia sed & de aliis Comitatus Angliæ*, here were the *probi homines* the Freeholders of the Counties, they that made the County Court or Turn, either of which in St. Edward's Laws is called the *Folkmore*, and is there described *vocatio & congregatio populorum omnium*, and we find by Statutes made before this time, that the *populus omnis*, or the *primores & probi homines*, according to *Eadmerus* are called *Peers* or *Nobles*, for that the County-Court, or Turn at least, was *Celeberrimus ex omni satrapiâ conventus*. Thus in King Edgar's Laws, *Centuria Comitibus quisque ut antea præscribitur interesse oppidana ter quotannis habentur Comitia. Celeberrimus autem ex omni satrapiâ bis quotannis conventus agitur, cui quidem illius Diocesis Episcopus & Senator intersunt, &c.* This some great men have taken for a *General Council* or *Parliament*, but the contrary is manifest in that only the Bishop of the Diocesis, and one Senator either the Count or the Sheriff are to sit there in Chief and this very Law being taken notice of by *Bromton*, it is there called *Scyremotus*; so in *Canutus* his Laws,

Nobiles, Minores sunt Equites sive Milites, Armigeri & qui vulgo Gentrosi & Gentlemen dicuntur, Camb. Brit. fol. 123. Lambert de Præcis Legibus.

The County was *Satrapiæ*, as they that composed it were *Satrapiæ*, so in a MS. cited by

Mr. Selden, a tryal is had at London before the *Principes, Duces, Lawyres* and *Satrapiæ*, and the same renewed at Northampton, is said to be *Congregati ibi totâ provinciâ sive Vicecomitatu coram cunctis*. Titles of Honour, fol. 524, & 525. Bromton, fol. 872.

where

where this is repeated, and where *Canutus* Bromton. fol. 924. Canuti Legis. his Laws give an Appeal from the *Hundred* to the *County-Court* or *Turn*; this of the County is called *Conventus totius Comitatus quod Anglicè dicitur Scyremote*.

But to proceed with the Charter of *Henry* the First, concerning the County and Hundred Court.

Et si amodo exurgat placitum de divisione terrarum si interest Barones meos dominicos tractetur placitum in Curia mea: Et si inter vavafores duorum Dominorum tractetur in Com. &c. Though according to this the Titles to Land between all but immediate Tenants, or such Lords as had none over them but the King, were determinable in the County, yet sometime before the Great Charter of *Henry* the Third, Common Pleas in General, which takes in the Titles of Land followed the King's Court, where ever he held it, and by that Charter were brought to a certain place. *Communia placita non sequantur Curiam nostram sed teneantur aliquo loco certo.* The King's Bench is *coram Rege*, and used to follow the King's Court, and was removable at the King's pleasure. Here Common Pleas as well as matters of the Crown were heard, and at this doubtless all the *King's Tenants* by *Knights Service* used to be present, of this *Bracton* says, *Illarum* Bracton. lib. 3. p. 105.

Curiarum habet unam propriam sicut aulam regiam & Fusticiarios Capitales qui proprias causas Regis terminant & aliorum omnium per querelam vel per privilegium sive libertatem ; But as the *Curia Regis* was held sometimes of the Tenants and Officers only sometimes of the whole Kingdom, when matters having no relation to Tenure or ordinary Judicature were in question, hence has arose the mistake of some Learned Authors in taking the *Curia Regis* to be nothing but the Court of the King's Tenants, of others that 'twas meant only of the Great Council of the Nation.

Whereas we may trace their frequent distinctions from the Conquest downwards very apparently, and very often their union.

It is agreed on all hands that the ordinary *Curia* was held thrice a year, at Christmas, Easter, and Whitsontide, and in the time of *William* the First, the places were as certain on Christmas at *Glocester*, on Easter at *Winchester*, on Whitsontide at *Westminster*, while they were held at the accustomed places, there was no need of any *Summons*, they that were to come *ratione Tenuræ* might well come *de More*; afterwards, they removed from place to place, the King made the Court where ever he was pleased to hold it, and indeed when ever

In præcipuis festis profuse convivebat natalis Domini apud Gloverniam, Pascha apud Wintoniam, Pentecoste apud Westm. quando in Anglia foret tenere consuevit Knyghton, fol. 2354.

but then it could not be the *Curia de more*; if it were at a different time or place, then there was need of *Summons*, if there were summoned at any time more than the *Ordinary Members* of the *Curia*; if this was on the day of the *Curia* there was an *Union* of the *Great Council* and the *Curia*, if on a different day there was a *Great Council* by its self, yet the *Members* of the *Curia* were a part thereof.

Not to anticipate what will appear from the *Presidents* which I shall produce to make good this my *Affertion*; I shall make my *Observations* upon them in order.

About the first year of the Reign of *William 1.* *William the First*, as *Mr. Selden* supposes, An. 1067. Titles of Honour, p. 581. was held the Council at *Pinnedene*, to determine the difference between *Odo Bishop* of *Baioux*, *Earl of Kent*, and *Archbishop Lanfranc*; if this were a *Curia de More*, then 'tis evident that more than *Tenants* in Chief; nay, all *Proprietors* of Lands assembled then of course even at the *Curia*, for the *probi homines* of several Counties were there, but it appears that it was upon the King's *Summons* to all the *Freeholders* of *Kent*, and of some adjacent Counties.

Præcepit Rex quatenus adunatis primoribus & probis viris non solum de comitatu Cantix, sed & de aliis comitatibus Angliæ Radmari Hist. nov. 1. fol. 9.

D 4

quarela

querela Lanfranci in medium ducerentur, examinarentur, determinarentur.

Disposito itaque apud Pinnedene Principum conventu Godfridus Episcopus Constantiensis vir eâ tempestate pradiues in Angliâ vice Regis Lanfranco iustitiam de suis querelis strenuissime facere iussus fecit.

Here all the *probi homines* are by variation of the phrase *conventus Principum*, a Bishop was President and pronounced the Judgment; but it was, as 'tis said afterwards, *Ex communi omnium astipulatione & iudicio*, this Judgment was afterwards revoked in another Council, which to be sure must have been as large as the other, else the Lawyers who were there, could never have made any colour of an Argument for the revocation.

Item alio tempore idem Odo permittente Rege placitum instituit contra saepe fatam Ecclesiam & Tutorem ejus patrem Lanfranc & illius omnes quos peritiores legum & usum Anglici Regni noverat gnarus adduxit. Cum igitur ad ventilationem causarum ventum esset omnes qui tuendis Ecclesia causis quâque convenerunt in primo congressu ita convicti sunt ut in quo eas tuerentur simul amitterent. 'Tis observable that there was a legal tryal, and the cause went on that side, where the Law seemed to be; but indeed afterwards *Lanfranc* coming possibly upon producing
some

some Evidences not appearing before the first Judgment was affirmed.

Here matter of ordinary Justice was determined before more than the ordinary *Curia*.

This looks very like a *General Council* of the whole Nation, to be sure 'twas more than a *Curia* of the King's Tenants and Officers, and is more than a County Court.

Yet in the nature of a County Court, it being several Counties united, and so was *adunatio conciliorum*, though not of the Council of the whole Nation.

An Ancient MS. makes this Chiefly a Court of the County of Kent.

Præcepit Rex Comitatum totum absque mora considerare, & homines Comitatus omnes francigenas & præcipuè Angl. in antiquis legibus & consuetudinibus peritos in unum convenire.

But then it adds, & alii aliorum Comitatum homines, and so confirms what *Eadmerus* says.

The nature of these Courts is easily to be explained by Writs, which we find from *William* the First for such Tryals as this at *Pinnedene*.

Wilhelmus Anglorum Rex omnibus fidelibus suis & Vicecomitibus in quorum Vicecomitatibus abbatia de Heli terras habet, salutem: Præcipio Abbatia de Heli habeat omnes consuetudines suas, &c. has inquam habeat sicut habuit primi.

*Cod. Ross.
MS. Selden
nota in E.
admer. fol.
197.*

*MS. Historia de terra
Aedelwoldæ
scriptus est
hic liber
temporibus
Hen. I. jussu
Heruici Episc.
Elenensis
primi.*

So the Record
Inter com. de
Term. Pasce.
18. R. E. feb.
R. E.

habuit die qua Rex Edwardus fuit vivus & mortuus, & sicut meâ jussione dirationata sunt apud Keneteford per plures scyras ante meos Barones, viz.

Gaulfridum Constansiensē Episcopum, & Balwinum Abbatem, & Petrum de Vallonnis, & Picotum Vicecomitem, & Tehehen de Heliom, & Hugonem de Hosden, & Gocelinum de Norwicum, & plures alios Teste Rogero Bigot.

Breve aliud
p. 107. a.

Willielmus Rex Anglorum Lanfranco Archiep. & Rogero Comiti Moritonio & Gaufrido Constantiensi Episcopo, salutem. Mando vobis & precipio ut iterum faciatis congregari omnes scyras que interfuerunt placito habito de terris Ecclesie de Hely antequam mea conjux in Normaniam novissimē veniret.

A Jury.

Cum quibus etiam sint de Baronibus meis qui competenter adesse poterunt, & prædicto placito interfuerunt et qui terras ejusdem Ecclesie tenent. Quibus in unum congregatis eligantur plures de illis Anglis qui sciunt quomodo terra jacebant præfata Ecclesie die qua Rex Edwardus obiit, et quod inde dixerint ibidem jurando testentur. Quo facto restituantur Ecclesie terra que in dominico suo erant die obitus Edwardi, exceptis his quas homines clamabunt me sibi dedisse, Illas vero literis signate que sint et qui eas tenent. Qui autem tenent Theinlandes

Under Testaments.

que,

que proculdubio debent teneri de Ecclesiâ, faci-
 ciant concordiam cum Abb. quam melio-
 rem poterint et si noluerint terra remaneant
 ad Ecclesiam. Hoc quoque de tenentibus so-
 cam et sacam fiat. Denique precipio ut illi
 homines faciant pontem de Heli qui meo præ-
 cepto et dispositione hucusque illum soliti
 sunt facere.

Lords of
 Mannors

Willielmus Rex Anglorum Goffrido E-
 piscopo et Rodberto et Comiti Moritonio, sa-
 lutem. Facite simul venire omnes illos qui
 terras tenent de dominico victu Ecclesiæ de
 Heli, et volo ut Ecclesia eas habeat sicut ha-
 buit die qua Edwardus Rex fuit vivus et
 mortuus, et si aliquis dixerit quod inde de
 meo dono aliquid habeat Mandate in magni-
 tudinem terræ et quomodo eam reclamationem, et
 ego secundum quod audiero aut ei inde
 escambitionem reddam aut aliud faciam;
 facite etiam ut Abbas Symeon habeat omnes
 consuetudines quæ ad Abbatiam de Heli per-
 tinent, sicut eas habebat Antecessor ejus
 tempore Regis Edwardi, Preterea facite ut
 Abbas seiscitus sit de illis Theinlandis quæ ad
 Abbatiam pertinebant die quo Rex Edwar-
 dus fuit mortuus, si illi qui eas habent secum
 concordare noluerint, et ad istud placitum sum-
 monete Willielmum de Guaregnna, et Ri-
 chardum filium Gisleberti, et Hugonem
 de Monteforti, et Goffridum de Manna
 Villâ, et Radulfum de Belfo, et Herveum
 Bituricensen,

Aliud

These had
 Lands
 which be-
 longed to
 the Abby,
 as appears
 in the In-
 quistion.

Bituricensem, et Hardewinum, de Escalers et alios quos Abbas vobis nominabit.

Upon these Writs many useful things might be observed, but I will confine myself as nigh as I can to my purpose.

From them as interpreted by equal authority of History it appears, that *Wil.* the first us'd to commissionate several of his *Barons*, I will not oppose their being his great *Tenants* in *Chief*, these were to preside in the Tryals of matters within ordinary Justice, which were to be try'd in the several Counties where the question arose, sometimes in one County, sometimes in several together as the men of the several Counties, that is, the several Counties were united.

Sometimes these great Men, sometimes the Sheriffs were to Summon the Parties, and to take care that an Inquest of the County or Counties concern'd be impannell'd, in the Counties, that is, by the choice of the *Freeholders*.

The Kings Commissioners were to pronounce the Judgment in the Kings Name or stead: So the Bishop of *Constance* did right to *Lanfranc*, 'twas *Judicio Baronum Regis qui placitum tenuerunt*, and yet *ex communi omnium astipulatione & judicio*, The Inquest upon their Oaths found the matter of Fact, the *Judges* stated it

Radmerus
Codex Ross.
Seldens
Spec. ad
Edm. fo.
200.

to the people, and delivered their Judgment; to which the *Primores & probi homines* assented, for 'twas *ex communi omnium stipulatione*; this agrees with what *Bracton* says of the Laws pass'd in the Great Council of the Nation. *De Concilio & Consensu Magnatum & Reipublica communi sponsione.*

But it may be objected that the Kings Writ is to the Great Men to do Justice, to which the Books give an answer that the Kings Writ does not change the Nature or Jurisdiction of a Court, and therefore though a Writ of Right or a *Fustities* be directed to the Sheriff, yet the Suitors in the County Court are Judges.

And what their Jurisdiction was in the time of *Wil.* the first, is to be gathered from what continued to the Freeholders or Suitors of the County Court of *Chester* even till the time of *Edward* the First.

Upon a Writ of Error to remove a Judgment out of the County Palatine of *Chester* into the King's Bench in a Plea of Land; The Chief Justice of *Chester* certifies that the *Fudicadores et Sectatores* the Suitors at the County Court, *clamant habere talem libertatem quod in tali casu debent omnes Barones & eorum Seneschal. ac Fudicadores ejusdem Comitatus summoniri audituri hujusmodi processum & Recordum & illa antiquam sigilla sua*

apponant assignat.

Bracton
fo. 1.

Cook. 6. Rep.
fo. 11. d. c.

Gentilemans case.

Pl. Dom. R.
apud Berwick super
Tweedam
de O'fabi
sanctæ Tr.
Ar. R. Ed.
fil. R. H. 10
coram Gil-
berto de
Thornton
Reog. Bra-
bazon. &
Rob. Malet.
Just. ad pl.
eiusdem
Dom. R.
tenend.

apponant; si fuerit infra tertium Comitatum per seipfos emendare. Et hujusmodi libertates a tempore quo non exstat memoria usi sunt et gavisi.

And the Chief Justice farther certifies, *quod fecit summoniri omnes Barones et Fudicatores*, accordingly.

The Parties Assembled at the Council of *Pinnedene*, were the *Primores et probi viri* of the Counties concern'd, which answer to the *Proceres et fideles Regni*, in the union of all the Counties in Parliament, as in the 42 of *Henry 3.* which in another Record of the same *Parliament* are branch'd

*Rot. Pat. 42.
H. 3. m. 10.
C. m. 4.*

out into *hauz hommes e prodes hommes*, there are the *Primores et probi viri*, e *du commun de nostre Realme*: that is, as the Statute of the Staple has it, the Prelates, Dukes, Earles, Barons, the Great Men of the Counties, *Grands des County's* as the French, and the Commons of the Cities and Borroughs.

*Stat. Staple
27 Ed. 3.
An. 1353.*

The Testimony of *Eadmerus* concerning the Parties to the Judgment at *Pinnedene* confirms me in my opinion, that the Summons to a Great Council as I take it in this Kings Reign, mentioned by *Simon of Durham* and *Florentius Wygorniensis*, which was to all the Bishops, Abbots, Earles, Barons, Sheriffs, with their Knights, was not to them and those only who held of them

*Sym: Du-
nelm. f. 213.
El. Wygorn.
f. 641.*

them by *Knights Service*, for more than such were Judges even for matters of ordinary Justice within the Counties, but that it was to them and the Sheriffs, *Knights*, the *Freeholders* of the Countys who were by *St. Edwards* Laws oblig'd to find Arms, and became *Knights Milites* as soon as by publick Authority they took Arms; the antient form of Manumission proves this sufficiently.

Siquis velit servum suum liberum facere tradet eum Vicecomiti per manum dextram in pleno Comitatu, et quietum illum clamare debet a jugo servitutis sue per manumissionem, et ostendat ei liber as portas et vivias et tradat illi libera Arma, viz. Lanceam et Gladium et deinde liber homo efficitur.

Thus he becomes a freeman and the Sheriffs *Knights* at the same time.

That all *Freeholders* had the appellation of *Milites*, is evident by many Records, and even a Statute, that for the choice of Coroners which was but declaratory of the common Law, as appears by several Records, before that time; I will instance in one.

Because one that had been chosen Coroner, was neither a Knight or Freeman, as that interprets it self, nor yet discreet, therefore a new choice is directed, *Miles non est, et in servitio alieno, et juvenis*

Nec multo post (viz.) post Curiam mandavit ut Arch. Ep. Com. Bar. Vicecom. cum suis milit. sibi occurrerent; Saresbrie quo cum venissent milites illorum fidei. contra omnes homines jurare coegit.

Comelli Inf. juris, Ang. de Libertinis Tit. 50. p. 11. Inter Leges wil. 1. Cap. 65. Seldeni ad Ead. not. & spicel. Stat. west. 1.

Rot. claus. 38. Hen. 3.

et

et insufficiens et minus discretus.

Here in *Servitio alieno*, a servant, is put in contradistinction to *Miles*, that is, to a Freeholder, or *Liber tenens*. *Et* here, has the like import with *Sed*, unless a man might have been a Knight; and yet no Freeman.

Rot. claus.

Et. 3. p. 1.

m. 18.

It

appears by

another

Record

that this

Shrivality

was of fee

in the

Count ac-

cording to

the excep-

tion in the

statute,

which

gives each

County

leave to

chuse.

The Freeholders of the County of Corn- wall Fine to the King for leave to chuse their Sheriff, 'tis said in the Record.

Milites de Com. Cornubia finem fecerunt

Rot. fin. 5^o. H. 3. pars 1^a. M. 9.

And these which are here called by the general denomination of Knights, are in another Record of the same specified under these names.

Episcopus, Comites, Bar. Milites libere tenentes, et omnes alii de Com. so that all the people of the County, that is, they which were part of the County Court were comprehended under the word *Milites*.

In another Record, the *Milites et probi homines*, that is; honest Freeholders are used as the same.

In pleno Com. tuo dicas Militibus probis hominibus Balliva tua. &c.

Vide leges

Edw. renov

4. wil. 1.

Isti vero

viri vix.

Heretochii

eligebantur per Commune Concilium, pro communi utilitate regni per Provincias & Patrias universas & per singulos comitatus in pleno solempni sicut & Vicecomites Provinciarum & Comitatus. elegi debent. Lambert A. chaz. no. m. a. Ed Cant. fo. 147.

Kings

King's time to be sure and long after: the Office of the *Heretochius*, who had been the *Ductor Militia*, had been discontinued no body knows how long, and 'tis spoke of only as an Office that had been.

But the Shieriff, being of the Freeholders choice, not the Kings, having no certain Salary, nor Fee upon any account taken notice of in the eye of the Law; but depending upon what the King should give out of the two thirds of the Profits of the County, (the *tertium denarium*, the third part, the Earl or Count had) who will imagine that the Sheriffs as Sheriffs, had any feud rais'd upon them by the King, that is, were to attend at his Courts or in his Wars, with their *Fendall* Knights the *posse Comitatus* which was assisting to them, being of quite another nature?

Inde d I find one *Fulcherus, homo Vicecomitis*, that is, Tenant by Knights Service, to which homage was incident, and in that sense *Miles Vicecomitis*; in another part, *Tenet Rogerus de Picoto Vicecomite de fædo Regis hanc terram tenuit Gold. sub Abbate Eli potuit dare absque ejus licentiâ sine sacâ.*

This had been freehold within the *Abbots Precinct*, alienable without licence, subject to no suit of Court, and was granted to *Picot* then Sherif of the County to hold of the Kings feud, that is, by Knights service.

E

Yet

Logier book
of Ely trans-
cript of
Deomday.

Yet he did not hold this as *Vicecomes*, but as *Baro*, so 'twas if any man had the County in fee: But the King Summoned the *Barones*, & *Vicecomites*, that is, the *Vicecomites* without consideration of their capacity as Barons, and their Knights; 'twas long after this, that the word *Vicecomes* was any thing more than the name of the Office here spoken of; an honorary Viscount was not then known, such indeed might at their creation have had feuds rais'd upon the Lands granted along with their Honours.

There is this farther proof, that this was more than a Council of the King's Tenants and Officers or *ordinary Court*; in that the Summons was immediately after the *Curia*, and that to a place sufficiently capacious, *Salisbury Plain*.

Et in hebdomada Pentecostes suum filium Henricum apud West. ubi Curiam suam tenuit armis militaribus honoravit; here was the proper work of the Curia, the King gave Arms in his Court to the Great Men, and immediate Tenants, the common Freeholders received them in the County Court, either at coming to Age, or upon becoming free by Manumission; which 'tis not probable that a man would desire, unless he had a freehold to live upon, or that thereby those Lands which were held in Villenage became free.

Neither had we any of dignity, although the Office in some places hath been hereditary from ancient time. until Hen. 6. *Tit. of Hon. 1. Ed. p. 255. & 256.*

Sym. D. n. m. fo. 213.

But

But though one were born free, yet I take it he was to receive a formal military Honour, have Arms deliver'd to him when he came to Age, and in the time of Hen. 1. 'tis us'd as a sign that one was not of age when he seal'd a Deed, and consequently 'twas not effectual because *Militari baltheo nondum cinctus erat.*

Tit. of Hon.
1 Ed. p.
373.
Assisa de
armis 27.
Hen. 2.

We find that when a freeman died, his Heir under Age; some body was to have the custody of the Arms.

Siquis Arma hac habens obierit remaneat heredi suo, et si haeres de tali statu non sit quod Armis uti possit, si opus fuerit ille qui eum habuerit in custodia habeat similiter custodiam Armorum, &c.

And when he came of Age, *tunc ea habeat*, this was in Hen. 2. time, and then the publick delivery of Arms to all Freemen might have been disus'd, but antiently as Mr. Selden observes, the taking Arms by young men from publick Authority was a kind of Knight-hood.

Tit. Hon. 1
Ed. p. 308.

But soon after Will. the first had at his Court Knighted his Son Henry, he call'd this great Assembly of Barones, & Vicecomites cum suis Militibus, his Curia was held at *Whitfontide*; *Nec multo post mandavit ut Arch. Ep. Abb. Com. Bar. Vicecomites cum suis Militibus die Kal. Aug. sibi occurrerent Saresberia, quocum venissent Milites illorum sibi*

S. Dunelm.

fidelitatem contra omnes homines jurare coegit.

Lamb. Ar-
chaionom.
Liges Ed. f.
146.

*Omnes pro-
ceres &
milites &
liberi homi-
nes universi
totius regni
Britannia*

*facere debent
in pleno
solcmote*

*fidelitatem
Dom. Regi
coram Epif-
copis regni.*

This seems
to be meant
of a Court
of all the
Counties
and then
confirms
my sense
in express
terms.

Clauſ. 1 H. 3.
m 14. dorſo.

Here I take it *Milites illorum* refers to the Knights of the Sheriffs, that is, the *Freeholders*, this was *adunatio conciliorum*, a joyning together of the several Councils of the Counties, where the swearing allegiance to the King was one of their Principal Works, the Kings Tenants had done it of course in the *Curia*, but methinks 'tis a strange thing that it should be us'd for an Argument, that this was not a great Council of the Kingdom, because they were *evocati ad fidei vinculum*. For satisfaction I will offer a Record of the same work done in Parliament in the time of Henry 3.

Celebrato nuper Concilio apud Bristol ubi convenerunt universi Ang. Prelati tam Ep. Ab. quam Primores et multi tam Comitibus quam Barones qui etiam universaliter fidelitatem nobis publicè facientes, concessis eis libertatibus & liberis consuetudinibus ab eis prius postulatis & ipsis approbatis. &c. Here the King yields them those Liberties and Free-customs, which they desired, and they swear Allegiance to him, here was the *fidei vinculum*.

But perhaps they will say that this of *W.* the first was no *Common Council* or Parliament, because it appears not that any Laws pass'd or that they were summon'd to that end.

For

For the first I think no man will say that the Assembly is less parliamentary because nothing is agreed upon in it. Indeed we find that where a Parliament was dissolv'd without any Act pass'd, 'tis said by Judge Cook not to be a Parliament, but the Inception of a Parliament, that is, no Session: but whoever will consult the Summons to Parliament in the time of *Ed. 1. & 2.* may satisfy himself that there were many Parliaments call'd, at which there were no Laws pass'd, but meerly Advice given, and yet at the end thereof, the Knights, Citizens and Burgeses had their Writs of Expenses, wherein the Kings declared that they had been called to Parliament, *nobiscum de diversis negotiis nos & populum Regni specialiter tangentibus tractatur.*

Rolls. Rep.

Rot. Claus.

33. E. 1.

m. 15. dor.

Rot. Claus.

5. E. 2. m.

21. dor.

For the last, 'tis no matter whether the cause of Summons were express'd, 'tis enough if it were *de quibusdam arduis*, or however else was the use of that time. Besides 'tis certain many Laws have pass'd in publick Councils antiently of which we have no intimation from those Historians which mention such Councils.

Wherever I find any publick Act of recognizing a Kings Title of justice, or of Elections of Persons to any Office, I shall not scruple to call such an Assembly a Council, and if it be General, a *Great*

or *Common Council* of the *Kingdom*.

And *Lanfranc* I conceive was in this Kings Reign chose to be Metropolitan of all *England* in such a *Council*; 'twas indeed in *Curia Regis* as *Gervacius*, and the Author of *Antiquitates Britannica* shew, but not the *Ordinary Curia*, for 'twas on

Aflus Pontif. Cant.

Autore Gervasio Dor.

f. 1653.

Antiq.

Brit. f. 110.

Relat. wil.

primi ad finem tractat.

de Gavel-

kind a sylâ

Tay. Ed. p.

194.

R. Hoveden

fo. 453.

fo. 453.

fo. 453.

fo. 453.

fo. 453.

fo. 453.

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fo. 453.

fo. 453.

fo. 453.

fo. 453.

our *Lady-Day*, which was not the time of such *Curia*, and the *Clerus* and *Populus Anglia* more than the Kings Tenants and Officers there confirm'd the choice of the *Seniores ejusdem Ecclesie*, that is, of *Canterbury*.

In the fourth of this King the controversy between the Archbishop of *York*, and the Bishop of *Worcester*, was determined at *Petreda* before the King, Archbishop *Lanfranc*, the Bishops, Abbots, Earles, et *Primitibus totius Anglia*, this Mr. *Selden* rightly calls a *Parliament*, which is easily to be gathered from the large and comprehensive Signification of *Primates*.

That General Summons the same year to have an account of the Laws, looks as if it were to a *Parliament*, to which a representation of twelve for every County was agreed on, but appears not to have been specially directed: be that as it will, there was no need of a full representative, or meeting in an entire Body, because it was not to lay any new obligation upon them, but was an Enquest of the several

Fecit summouiri, &c. nobiles sapientes, &c. Electi igitur de sing. totius Patrie Comit. viri duodecim, &c. Lambert Archionem.

fo. 138.

several Counties to present their old Laws. *Seld. Specil. f. 171.*
 But when he seemed inclined to make the Customs of some few Counties the Rule to all the rest, *Ad preces communitatis Anglorum*, he left to every County its old Customs.

In the Seventeenth of this King, *Convocavit Rex multitudinem Nobilium Angliæ*, the multitude of the Nobles of *England*, says *Gervace of Dover*, this was about Ecclesiastical Affairs, Concerning the bringing regular Monks into Monasteries, and an old Monk tells of the Charter or Law then agreed on. *Hac charta confirmata est apud Westm. in concilio meo, Anno Regni mei XVIII. presentibus omnibus Episcopis et Baronibus meis*, where *Barones mei* must either be meant with relation to the whole Nobility of *England*, which were all the King's men, though not his Feudal, especially immediate Tenants, before whom the Test of Charters used to be, as in *Henry the Third's* time, the Earls only subscribed at the request of the rest, or it might be only his Tenants in Chief, subscribing as was usual.

In the Eighteenth the King impeaches his Brother *Odo* for his extortion, this was at the Isle of *Wight*; *In Insulâ Vêtâ ei obviavit, Ibi in mirum congregatis in aulâ Regali Primoribus Regni*: this was matter of ordinary Justice, and though *Primores Regni* are named; yet it might have been

E 4

only

An. 1083.
17 Will. 1.
Gerv. Doreb.
Actus Pontif. f. 1653.
Tota Angliæ Nobilitas in unum collecta, quasi sub numero non cadebat, Matt. Paris p. 255.
Monachus Anonym. Ord. St. Bened. p. 44.

An. 1084.
18 Will. 1.
(i. e.) Curia Regis, Ord. Ricus Vitalis fol. 647.

only such of them as attended on his Wars, or in his Court; and 'tis not probable that being abroad, all the *Primores Angliae* were summoned to this.

44. 1085.
13 Will. 1.

In the Nineteenth of his Reign, I take it that he held barely his *Curia* at *Glocester*, for 'twas a Military Council, except that his Judges, Great Officers, and constant Attendants were part of it.

S. Dunelm.
fol. 213.

Partem exercitus sui remisit, partem secum per totam hyemem retinuit et in nativitate Domini Glavorniae Curiam suam tenuit, & at this Court I find only some Ecclesiastical Preferments disposed of to three of his Chaplains, which required no solemn Consult; but his Laws passed *per Commune Concilium totius Regni, semel atque iterum ait se concessisse, &c. per Commune Concilium totius Regni,* and his *Leges Episcopales*, Ecclesiastical Laws were established, *De Communi Consilio Arch. Episc. Abb. et omnium Procerum Regni sui.*

Spelm. Glos.
2. part. fol.
451. tit.
Parl.

Seldeni aut
& spic. ad
Radmeram,
fol. 168.

For *William* the Second, whereas a great Antiquary will not say whether there were any solemn convention of the Nature of a *Common or General Council* in his time, 'tis manifest there was and we may find the Marks of distinction between his ordinary *Curia* & Great Council or Parliament. He was crowned *convocatis terre magnatibus*, says *Bromton*, *volentibus animis Provincialium Malmf.* that is, the whole Kingdom

44. 1087.
Bromton,
fol. 983.
Malmesb.
fol. 120.

Kingdom agreeing or the Major part ; indeed it seems the Normans were for Duke Robert, but the English were not so wasted, as some imagine, but that they carried it, *Angli tamen fideliter ei iurabant*, as Simeon of Durham shews, and Hoveden out of him.

In the Second year of his Reign he held a Curia on Christmasts at London, but 'twas more than a Curia de more, for there were *Fusticiarii ac Principes totius Angliæ*.

In the Third, *Turmas optimatum accivit & Guentonix congregavit*, he called together the Troops or Army of Nobles, *Barones aloquitur*, inveighs against his Brother Robert, and perswades them to a War, & *ut consilium inirent quid sit agendum jussit*, bids them consider or advise what was to be done. *His dictis omnes assensum dederunt*, all consented to a War.

The King being very ill, *omnes totius Regni Principes coeunt, Episcopi, Abbates, & quique Nobiles, promittuntur omni populo bonæ & sanctæ leges*; here the Princes and Nobles reach to *omnis populus*. Here Anselm is named Archbishop by the King, & *concordi voce sequitur acclamatio omnium*, the noyce and publick acclamation witnessed the peoples consent, and this is said to be *secundum totius Regni electionem*, or as another Author.

Rex Anglorum consilio & rogatu Principum suorum, Cleri quoque & populi petitione et electione.

S. Dunelm.
fol. 215.

Rog. Hoveden, fol.

461.
An. 1088.

Bromton, fol.
983.

An. 1089.
3 Will. 2.

Order. Vital. fol.
680.

An. 1093.
7 Will. 2.

Eadmerus,
fol. 16.

Gondulfus
Ross. Ep.

Monac. Rec.
inter An-

selm. Epist.
The lib. 3.

An. 1094.
8. Will. 2.

The King being upon leaving *England*, to settle his Affairs in *Normandy*, *Ex precepto Regis omnes frè Episc. unà cum principibus Angl. ad Hastings convenerunt*. Here *Anselm* pressed that there might be *Generale Concilium Episcoporum*, but went from the *Curia*, the Great Council, dissatisfied.

Edmerus,
fol. 24, &
25.

Anselm had propounded a question to be discussed in Council.

Edmerus,
fol. 26.

Utrum salvâ reverentiâ et obedientiâ sedis Apostolica possit fidem terreno Regi servareannon?

An. 1095.
9. Will. 2.

Ex Regiâ sanctione. fermè totius Regni Nobilitas quinto Id. Martii pro ventilatione istius cause in unum apud Rochingham coit.

Fol. 27.

Fit itaque conventus omnium, This is called *Curia*, but could not be the Court of Tenants and Officers only.

Fol. 28.

Anselm harangues the Assembly in *medio Procerum et conglobata multitudinis sedens*. The other Bishops are the Mouth of the Assembly, and the Bishop of *Durham* the Prolocutor; they tell him they will have him obey his Prince, upon this he appeals to *Rome*, *Miles Unus*, a good honest Freeholder steps out of the throng, *de multitudine prodiens*, and with great devotion sets before his Holy Father the Example of *Job's* patience, upon this the Prelate hugged himself in the opinion that the *populus*, the Populacy were for him, though the

Fol. 29.

the Princes, the heads of the Assembly were against him.

This Controversie is adjourned to the *Curia*, on Whitfontide, which still was no ordinary one: *Anselm* was celebrating a *Curia* by himself, when he should have attended at the King's, according to the adjournment, but it seems he expected special Summons, which he has accordingly by word of mouth, no formal Writ, but Messenger. The King *tenuit Curiam suam in ipsa festivitate apud Windlesoram*, and there were *Proceres, et coadunata multitudo*, a very Solemn Convention. Fol. 31.
Fol. 34.

The Authority cited by Sir *Hen. Spelman* says, that the Clergy was not at the Council at *Roch. in quo ferme totius regni nobilitas prater Episcopos & Clerum convenitur*, so that it would seem a President for that Parliament, in the time of *Edward* the First, taken notice of by Bishop *Fewel*, of which he says our publick Monuments, that is, Records have it. Spelman
concil. vol.
2. fol. 16.
Fewelli Ap.
contra
Hard. fol.
455.

Habito Rex cum suis Baronibus Parlamento et Clero (id est) Arch. et Ep. excluso statutum est. There it seems the *Lords and Commons*, who undoubtedly came at that time, without relation to Tenure, are *Barones sui*: But whether the Council at *Roch.* had the Clergy present or no, the Bishops and Barons tell *Anselm* at another

Great

Eadmerus,
fol. 39.

Great Council, how much soever he thought the Assembly on his side, that *placitum habitum est contra se*, his pretences were overruled, *totius regni adunatione*.

Yet notwithstanding their sense then delivered, they gave a farther day till Whitsontide; so that in effect 'twas Judgment *nisi*, then indeed *Anselm* with a side Wind got an Advantage of the King, he cunningly waves the question, whether he might swear Obedience to the King, and puts it only whether the Pall were to be received from the Pope, or the King, and carried that Point, that it belonged to the singular Authority of Saint Peter.

Eadmerus,
fol. 34.

This was a General Council on the Feast day, *Adquievit Multitudo Omnis, unde cum omnes silentio pressi conticuissent, Statutum est*. It seems till the Multitude rested satisfied, the Law could not pass.

An 1097.
10. Will. 2.

But two years after on Whitsontide was held no more than the Ordinary Curia —

Cum igitur in Pentecoste festivitatis gratia Regiæ Curia se presentasset: peractis igitur festivioribus diebus diversorum negotiorum causæ in medium duci ex more cœperunt —

That 'twas usual when the height of the feasting was over, to go to the Tryals of Causes, or Matters of Ordinary Judicature. In August following is held a Great Council,

cil, the King being, *de Statu Regni acturus*.

Then he sends out a General Summons.

In sequenti autem mense Augusto cum de Statu Regni acturus Rex, Episcopos, Ab- *Eadmerus, fol. 38.*
bates & quosque Regni Proceres in unum præcepti sui sanctione egisset, & dispositis his quæ adunationis illius causæ fuerant; &c. *Anselm* asks leave to go to *Rome*, but is denied it. In *October* following there was a General Council at *Winchester*.

Wintoniæ ad Regem ex condito venimus, Eadmerus was there himself.

The first day the Tumult from the vast multitude was so great, that they could do nothing, and therefore broke up the Court, and adjourned to the next day.

Orta est igitur ex his quadam magna *Eadmerus, fol. 38.*
tempestas diversis diversæ parti acclamantibus; the sense of the Assembly was, that *Anselm* should observe the King's Laws; upon which he departs the Realm in a pett.

'Twas pity *Eadmerus* went with him, so that we loose the account of what passed in his absence. I think however we have enough to prove that there were then no less, nay greater Assemblies, than what now compose our Parliaments, nay the very word Parliament was not unknown in that time. *Parliamentum dixerunt Croylandenses*

Spelman
Glos. 2. part.
tit. Par.

landenises Canobita sub Tempore Willielmi Secundi.

Sim. Du-
nelm. fol.
218.
An. 1093.

For farther proof 'tis observable, that this King stood upon it, that *Malcolm King of Scots, Secundum Judicium tantum Baronum suorum in Curia sua Rectitudinem ei faceret.*

That is was to do him right, or answer his demands, according to the Judgment of his *Curia*; or *Ordinary Court of Justice*; *Malcolm* pleads that 'twas to be in the confines of both Kingdoms.

Secundum Judicium Primorum utriusque Regni, that is, according to the Judgment of a Great or General Council of both Kingdoms united, and who were the *Primores* that constituted the Great Council of *Scotland*, even till the 23. of *JAMES* the First; is evident by his Act of Alteration, or recommendation of a Change, which has it; that the small Barrons, and Fee-Tenants (or Freeholders) need not to come to Parliaments, nor General Councils, without Election, which shews that till then they did: And how they came here in this King's time, I leave any body to think as they please, sure I am here were more than Tenants in Chief.

Titles of
Honour.
1. Ed. P.
287.

Rad. de Di-
cto. fol.
492.

There was one Council in his Reign, which had no Addition to it, the Author says only *Celebravit Concilium*, and this, I take

take it, was no more than an *Ordinary Curia*, especially it being *Octabis Epiphaniæ*; And there was a Legal Tryal by Duel, and by Judgment of the Court, the Party conquered had his eyes pull'd out, and his stones cut off. That besides the Great Council, this King above mentioned, held the *Ordinary Curia*, *Sive de more*, we have clear Authority. *Cum gloriose & patrio* Huntington fol. 578.
honore Curiam tenuisset ad Natale apud Glocester, ad Pascha apud Winchester, ad Pentecosten apud Londoniam.

By the foregoing Instances, we may see, notwithstanding *Polydore Virgil's* suppressing, as much as in him lay, the MS^s. which might take from the Authority of his History, how many rise up in Judgment against his Assertion in the time of King *H. I.* Note, he lived but in the time of Henry the Eighth.

Illud oppositè habeo dicere, Reges ante hæc tempora non consuevisse populi conventum consultandi causâ, nisi perrarè facere, adè ut ab Henrico id institutum Fure Manasse dici possit——

And it seems the great Mr. *Lambert* (who possibly was the first that after the Ages, in which the word *Baronagium* was used and known to express the full Great Council or Parliament received its true Notion, *viz. that both the Nobility and Commonalty of the Realm were meant under these words, the Barons of the Realm*) this Lambert's Archæion, pag. 263.

Great

Pag. 237.

Great Man it seems, had not met with those MS^s. which since have offered their Light to the World; otherwise he would not have subscribed to the foregoing opinion of Polydore Virgil, however Polydore himself, as far as his Authority goeth, gives us to believe the frequency of such Solemn Councils, from this King's time downwards. This Prince was so pleased with his People, and they so much at ease under his gentle Reign, there was that mutual confidence in each other, that 'tis a question whether he ever held a Solitary Curia of Tenants and Officers, only we find, *Tota Nobilitas cum populi numerositate, cuncti Majores adunati, and Regnum Angliæ.* All at several times at the Curia de More.

Radmerus,
fol. 49.
fol. 94. &
105.

Mat. Par.
Ed. Tig.
fol. 54.
Mat. Par. f.
52, & 53.

At other times we have *Commune Concilium Gentis Anglorum, Clerus & populus congregatus*, the same called *Commune Concilium Baronum Regni Angliæ.*

Florentius
Wigorn.
An. 1129.

*Regni Nobilitas sua Sanctione adunata,
Concilium Magnum ———*

An. 1131.
32 Hen. 1.
Huntington
fol. 384.

Magnum placitum apud Northamtune congregatis, Omnibus Principibus Angliæ, that is, Baronibus, that is, Clero & Populo —

Though 'twere a pleasure to dwell upon this King's Reign, yet it is needless to insist upon further proof, that his Councils consisted

sisted of more than Tenants in Capite and great Officers. King Stephen was elected King, *a Primoribus regni cum favore Cleri & Populi, Clericorum & Laicorum universitate, ab omnibus. viz. tam Presul. quam Com. & Baron.*

1 *Stephanus*
An. 1135.
Rich. Ha-
gustal.
p. 312.
Joh. Ha-
gust. f. 258.
Mat. Par.
f. 71.

Stephanus his et aliis modis in Regno Angliæ confirmatus, Episcopos et Proceres sui regni regali edicto in unum convenire præcipit, cum quibus hoc Generale Concilium celebravit.

Rich. Ha-
gust. f.
314.

This to be sure was more than the Ordinary Curia : The eighth of July two years after a Council was held at Oxford, which broke not up till September following, this was *Conventus Magnatum*, was not on the ordinary Court day, yet perhaps was not a Great General Council : It was only for matter of ordinary Justice; some of the Laity had complain'd of two Potent Bishops that fortified their Castles, as if they intended to rule over them by the Temporal, as well as spiritual Sword, and had made a Catholick Interpretation of St. Peter's, *ecce Duo Gladii.*

An. 1138.
3. Step.

Malmsbury
f. 181, &
183.

It seems the Bishops Plea was, that this was no Ecclesiastical Synod, that is, in the true sense, not Assembled for Ecclesiastical, but for Civil Matters; but in their sense, that they would be tryed by the Canons, and Canonical Persons; the Debate is put off to be determined, in a General Council appointed to be at Winchester.

F

Here

Malmshury
hif. Nov.
2. p. 188.
189.

Stat. of
Merton. cap.
6. 1. f. 80.

Statuta
Regni Polo-
nici.

Here the Clergy set up for themselves, & having the Popes *Legat*, thought themselves a body sufficiently entire, without that other part of the *Clerus*, Gods Inheritance, which used to make up even these Assemblies; with much ado, they first let in the Nobility Proprietors of Land, *Omnes Barones in eorum communionem jam dudum recepti*. They had not sate four days but the Londoners-Citizens demanded to be admitted amongst them as Citizens or Traders, they were no part of the Nobility, 'twas a disparagement for the Son of a Noble Man a Freeholder to be married to a Trader. And this our constitution agreed with that of *Poland*, where *Mercator* and *Nobilis* were alway contradistinct, and there is a remarkable Clause in one of their Statutes. *Nobiles appellandos censemus, qui licet matre Populari, patre tamen Nobili sunt procreati, quorum tamen parentes & ipsimet vivant & vixerint ad instar aliorum Nobilium in regno ut supra; & non exeruerint vel exercent eas artes & actiones quas communiter cives & qui in civitatibus morantur exercere solent; per contrarium enim usum nobilitas ipsa in populum, & plebeiam conditionem transire solet*, and with them the Inhabitants of Cities which were sicut *Proceres* sent Deputies, whereas the *Possessionati* the Nobles came to the Great Councils in person.

There

There came to the Council above-named
 a Representative in the name of the whole
 City of London. *Feriâ quartâ venerunt*
Londinenses, & in Concilium introducti cau-
sam suam eatenus egerunt, ut dicerent missos
se a communione quam vocant Londiniarum,
 but the Clergy carried it with an high hand,
 and told them, that it became not them
 who were principal men in the Kingdom
 and *sicut Proceres*, as it were Nobles, to fa-
 vour them who forsook their Lord, which
 I think was meant of the Pope, and his
 Clergy : to be sure they excommunicated
 the King, and those that held with him,
 for meddling in their matters : but they
 had much ado to quiet the City of London
 for the haughty Answer they gave them.

They that were at this Assembly
 came not as the King's Tenants, or be-
 cause of any Office in his Court. Not-
 withstanding all the Canonical Thunder,
 at a great Council possibly of Lay-men
 only, *Habito postmodum Concilio coram*
Primoribus Angliæ, statutum est ut omnia per
Angliam, Oppida, Castella, Munitiones quæ-
que, in quibus secularia solent exerceri ne-
gotia Regis & Baronum suorum juri cedant.
Continua.
ad Floren.
wig. f. 67 i.

Whereby all the strong holds which
 Clergy-men had were subjected to the Do-
 minion of the Laity, whether only the
 King's Barons, *Barones Curia sua* were to be
 Judges in the disposal is needless to deter-
 mine.

But *Statutum est coram Primoribus Angliae*.
This was made a Law by all the Baronage of
England.

We have several other Councils in this
King's Reign.

In the seventh of his Reign, there is
an Act of Recognizing *Matilda* the Em-
press her Title to the Crown by all but
the men of *Kent*; and 'tis not improbable
that they looking upon themselves as a
freer People than the rest, thought it was
not fit for them to own any Title but meer
Election.

*Matilda Imperatrix ab omni gente Anglo-
rum suscipitur in Dom. exceptis Kentensibus.*

H. Hunt f.
392.

An. 1143.
Neubergen-
sis p. 37.

Radulphi
Polyron.

1152. 17.
Stephani

Ger. Doro-
ber. f. 1379.

An. 1154.

H. Hunt f.

398. 19.

Step.

Neubergen-
sis lib. 1. c.

32.

Brompton f.

1040.

In the ninth the *Proceres* are Summoned
per *Edictum Regium* to *St. Albans*.

The same year is a great Council at
Northampton called *Parliamentum*.

In the seventeenth, *Generale Concilium*
convocavit at *London*, to which were cal-
led the Bishops and all the *Proceres*.

In the nineteenth and last of his Reign, all
the *Principes* met at *Oxford* *ad octavis*
Epiphaniae, and soon after the *Colloqui-*
um at *Oxford* they met at *Dunstable*.

And he held another great Council the
same year at *London* on *Michaelmas* tam
pro negotio Regni quam provisione Eccles. Ebor.

Cum Episcopis & Optimatibus terra, this
was both for Ecclesiastical & Civil Matters.

The Council

The Council of *Clarendon* with that Hmr. 2.
 part of its Constitutions which hath been
 much controverted of late, will detain me
 and the Reader too long to examine the
 several Instances of great Councils or of
 ordinary Courts in this King's Reign.

By the examination of this possibly
 I may give some additional light to what I
 have already represented.

The end of this Convention was, to II Hen. 2.
An. 1164.
 vindicate the Crown and Kingdom of *En-*
gland from the usurpations of the Clergy,
 who insisted upon Exemptions, and an
 uncontrollable license to do ill upon pre-
 tence of the sacredness of their persons.
 Whereas the King would allow them
 no other privileges, or exemptions, than
 what his laws had given them.

This Council was compos'd of more
 than tenants in chief, 'tis call'd a *Great*, and
full Parliament; *Generale concilium*; the
 parties present are under divers denomi-
 nations, all coming to the same: *Rex*,
Arch. Ep. Ab. Pr. Com. Bar. & Proceres
Regni, as *M. Paris*; *Rex & Magnates regni*,
Mat. West. *Anglicani regni præsules &*
Proceres, Gervasius; *Episcopi*, & *proceres*,
Radulphus de Diceto. Titles of
Honour,
fol. 582.
M. P. fol.
96.
Ma. West.
fol. 248.
Gervasius
Dor. fol.
1385.
Imag. Hist.
fo. 536.
Antiq. Brit.
in vita
Tho. Bickel
fo. 133.
Hoveden
fo. 493.

Prelati, proceres & Populus regni, as
 another, *Clerus & populus regni*, *Hoveden*.

The whole Kingdom as *Dr. Stilling-*
fleet

Answer to *fleet* shews us out of the Quadripartite History.

Cressy's
Apol.

p. 392.

11 Article
Conc. Clav.

Grand
quest. p.
152.

The body of the Realm as Sr. Roger Twisden terms it; Yet I conceive that the clause so much tost to and fro, without any right settlement, refers to the ordinary *Curia Regis*, to which the Kings Tenants were bound by their tenure to come; and where ordinary justice or jurisdiction in all, or most causes was exercised, and this gives some account why the Bishops who have been from the Normans acquisition downwards *tenants in chief*, because of their temporalties, and during vacancies the Guardians of those temporalties, upon that very account have been particularly summon'd, why I say they should be allowed to vote in a legislative capacity which they have as *Proprietors*, though no tenants of the King, when they proceed by way of bill of attainder, and yet tenure only qualifying them for Judges in Parliament (as before in the Kings ordinary *Curia*, *interesse judiciis Curia*, or at least they succeeding to the jurisdiction of the Tenants in the *Curia*) according to the constitution of *Clarend.* that jurisdiction which they have as *tenants*, or as succedaneous to such, extends not to matters of blood. It will not be proved, that the coming to the Great Council, where the

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extraordinary power, justice, or legislature was exercis'd, was meerly because of tenure, and that no body had right to be of the great Council but they that held *in capite*, or were members of the ordinary *Curia*; indeed when that was taken away, or diffus'd, they that before were to do suit and service at the *Curia*, were to perform it at the Great Court, the *Parliament*; for there was no other Court where they could, and therefore in the 8th of *Ed. 2.* 8 Ed. 2. the Inhabitants of *St. Albans* plead that they held *in Capite*.

And as other Burroughs were to come to Parliament *pro omni servitio*.

But that the coming to the Judgements of the ordinary *Curia* was meerly because of tenure appears from the words of the constitution:

Arch. Ep. &c. & universi persona regni Qui habent personatum: qui de Rege tenent in capite; habent possessiones suas de Domino Rege sicut Baroniam, &c. & sicut Barones cateri debent interesse judiciis Curie Regis cum Baronibus; &c. Ger. Dnab. fo. 1387.

That is, except as is there excepted, these ecclesiastical tenants or Barons were to be present, or interested in the Judgements together with the Kings Justices and Officers, as the other Barons, that is Lay-tenants *in Capite*. It seems both Cum Baronibus suis, Seldens Jan. Angl. facies altera, p. 98

Ecclesiasticks and Lay-tenants *in Capite* held *per Baroniam*, yet I think *cateri Barones* ought to be confin'd to them that held of the King in Chief by Knights service, for many held in *feodo firmâ* by the payment of a certain rent, or petty Serjeanty, the payment of a gilt spur or the like, *pro omni servitio*, of which the Records are full, who were not ordinarily to give their attendance at the *Curia*. But tenure *per Baroniam*, was I take it in those times no more than tenure by Knights Service *in Capite*. This perhaps I could prove by many records. I shall instance in one to the honour of a Noble Peer of this Realm, now Earl late Baron of *Berkley*, as his Ancestors have been ever since the time of *Hen. 2.*

Com. de
Term.
Pasch. 4
Ed. 3. penes
Rem. Dom.
Thef. in
scar.

One of his Ancestors had the grant of the Mannor of *Berkley Harnes* from *Hen. 2. Tenendum in feodo & hereditate sibi & heredibus suis per servitium Quinq; Militum*. An office is found in *Edw. the third's* time upon the death of *Maurice Berkley*, and there 'tis that he held *per Baroniam faciendo inde servitium Trium Militum pro omni servitio*. Two Knights fees having been alien'd ; *inde*, upon the account of the Barony, or rather the land, was the Knights Service, and the Knights service made the Barony, as appears, there being

being no particular words creating any honourable tenure, but what resulted from serving the King with men upon his own charges: the number I take it made nothing towards the nature of the tenure. These tenants by Knights service, the Kings Barons, were obliged to be at the Kings Courts *de more*; if at the Great Court when he should call them, the chief ground was upon their ordinary attendance amongst the rest of the tenants.

That what relates to the *Curia Regis* within the Const. of *Clarendon* was meant of the ordinary justice of the Kings Court, and consequently the *ordinary Court*, old

of *Glocester* is express. *Tus a Jani Anglorum sacis altera,*
man of holi-Church hath ein lay fee, Par-
son, otherwhat he be, he shall do therevore P. 100.
King's Service, that there valth, that is
right ne be vorlore. In plaiding, and in
Affize be; and in judgement also. But
 this farther appears by the summons to, and proceedings at *Northampton* the very next year.

This *Hoveden* calls *Curia Regis*, and *Hoveden*,
 Mr. *Selden* informs us out of an antient ^{fo. 494.}
 Author, that the summons thither was only to the members of the ordinary *Curia*, *Omnes qui de Rege tenebant in Capite*, ^{Tit. of Honour, fo. 583.}
mandari fecit: upon the Bishops with-
 drawing from the judging of *Becker*,

A a 3

the

(the ground of which I shall soon examine.)

*Evocantur
quidam
Vicecomi-
tes & secun-
da digni-
tatis Ba-
rones, anti-
qui die-
rum, ut
addantur
eis & as-
sint judi-
cio, Ste-
phan. MS.*

Quidam Vicecomites & Barones secunda dignitatis were added, 'twas *quidam Vicecomites* some Sheriffs, it could not be all because several were *Majores Barones*, having the countys in fee, but this restraint seems not to reach to the *Barones secunda dignitatis*; suppose that it does, and so comes only to the uppermost of them, the Vavasores perhaps, that is inferior or Mesne Lords holding Mannors of others, not the King; still here were more than tenants in Chief, and to be sure, these being said to be added, were more than the members of the ordinary *Curia*, and this Court to which they were added was only the ordinary Court of Justice. If we can shew when this ordinary Court of Justice determin'd, and who succeeded into the places of the ordinary members of it, we may go farther to clear the matter in question than perhaps has yet been done. If the Lords the great men, succeeded the Court of Tenants, and were let into that jurisdiction which they exercised, and there is no colour of proof that Clergy-men in the *Curia Regis* ever voted in Capital causes, but if on the other side, (the prohibitions running against *judicia sanguinis*, and the constitution of Clarendon

re-

referring to the *Curia Regis*, where the ordinary *judicia sanguinis* were agitated and pronounced) justly, they took themselves to be excluded the *Curia*, *quando de illis materiis agitur*; It will I think be evident that the Bishops, as a part of the house of Lords, answering to the Court of the Kings tenants, never had any right to vote in Capital cases.

But it lyes upon me here to shew when and how the *Curia Regis* went off.

I have before observed that the duty of Tenants was either to attend the King in his Wars, in his administration of ordinary justice, or as a Council to give him aid in lieu of, or by way of advance upon their personal services in the Wars.

As they attended in the Wars they could not be a Court or Council, and so no *Curia Regis*.

As a Court of justice, their attendance was superseded by *Magna Charta*, 2, or 9 of *Hen. 3*.

Communia placita non sequantur Curiam nostram sed teneantur in aliquo loco certo.

Magna Charta, cap. 11.

Hereby the administration of justice was taken from the ordinary *Curia*, and fix'd at the Courts in *Westminster-hall*.

This explained by *Articuli super charta*.

Yet after this they continued a Court, or Council for aids till the 34th of *Edw.*

Stat. 34
Ed. 1. De
tallagio
non conce-
dendo.

the first, and by that they were wholly gone as a separate Court, or Council ; being from that time no tax nor aid could be raised without full consent of the great Council, or *Parliament*.

When this Court was gone, as before I observed, we find Tenants in chief pleading that their coming to the Great Court or Parliament was *pro omni servitio*, which shews manifestly, that the Great Court not only took in the less, as it did in the nature of the thing, being that and more ; but that it preserved the Image of it ; and indeed what was a duty in them that came to, or were members of the ordinary *Curia*, turn'd to a priviledge or right in them who succeeded to the dignity, though not the services of Tenants.

As the Tenants were obliged by their Tenure *interesse judiciis Curia Regis*, they that succeeded to their dignity had right to be Judges in *Parliament*. And whereas the *Curia Regis*, as a Court of Justice was taken away or defeated in the time of *Hen. 3.* we find by *Britton*, suppos'd to have wrote in the fifth of his immediate successor, that the *Barons* were Judges in Parliament, as the Tenants and Officers had been in the *Curia Regis*.

Et

Et en case ou nous sommes partie volons que Britton
 nostre Court soit judge sicome Counts & p. 41. The
Barons en temps de Parliament. King's
 Bench.

Now let us return to the constitution of
Clarendon.

The tenants whose duty it exacts (the
 Lay Tenants disputed not) were Tenants *Debent in-*
 by *Barony*; that is, by Knights Service *teresse Ju-*
 of the person, or Crown of the King, and *dic. Curie*
 except as there is excepted, were of duty *Regis, &c.*
 to be present at all Tryals or Judgements, *usque per-*
 or to exercise Jurisdiction in all causes: *veniat in*
 but *judicium vita vel membrorum* they *judicio.*
 were not to meddle with; when they came *Geru. Do-*
 in *judicio*, in jurisdiction, or the tryal of *rob. & vat.*
 causes, *ad judicium vita vel membrorum* *cop. quousq;*
 that is to such a cause, or the exercise of *pervenia-*
 such a jurisdiction, or such a tryal, they *tur ad di-*
 were to withdraw; and this is the plain *minutionem*
 sense of *judicium vita vel membrorum* *membrorum*
 given us by that Great Judge learned both *vel ad mor-*
 in the Common and Civil Laws, *Bracton*, *tem.*
 who wrote in the Reign of *Hen. 3.* Grand *Ma. Par.*
 son to this King, who enforc'd the *leges* *& others.*
avitas, in this particular, and others con- *This the*
 tain'd in the Constitution of *Claren-* *Author of*
don. *the Grand*
Question
follows as
most au-
thentick.

This Great Lawyer, having enumera- *Bracton*
 ted several priviledges, or jurisdictions, *lib. 2. cap.*
 granted from Kings of *England* to their *24. p. 56.*
 subjects, amongst other things has these
 words. *Item*

Item si cui concedatur talis libertas quod habeat soke, & sake, toll, & them, Infangthes, & utfangthes, Judicium vitæ & membrorum, & furcas, & alia qua pertinent ad executionem judicii, &c.

Here this *Judicium vite & membrorum* must be meant of the whole tryal, or jurisdiction, otherwise it is supposed, that he tells us, the King granted those men Liberty to pronounce, or depute those that should pronounce, the final Judgment, who yet neither by themselves, nor Deputies, had any thing to do with the præliminaries, the questions arising between, and leading to the Justice of the Judgement, which is an absurd supposal.

Grand
Question,
p. 34.

The having *Judicium*, or power in *judicio*, does not, as I conceive, any way suppose a tryal already begun, and the Bishops present so far in it; but when it comes to the point of mutilation or death, then they have leave to withdraw; that is, they are a Court, or of the Court, for such a cause, and yet they are not a Court for such a cause; for the cognizance of causes takes in the *Judicium*, the tryal, in the agitation, *Agitare judicium*, and in the final or solemn pronouncing of the Judgement. It is indeed possible, though not rational, that the law should give the Jurisdiction over part of a Cause, and not the whole; yet 'tis not to be imagined that such was the meaning of the Law-makers,

espe.

especially, when we find the words of the law, according to the sense put upon those words, by the most learn'd, in the age nearest to them that transmit the law to us, are not to be brought to such a dividing sense without a great deal of force: And to this the several other copies of this constitution give weight. But we are told Grand quest. p. 34. that *the sense is best understood by the practice of that age*. If the sense be plain, a contrary practice is not to determine the sense another way, as, as great an Author, the learned Doctor *Stillingsfleet*, proves at large in his answer to Mr. *Cressy's* Epistle Apologetical, where he shews the number of Statutes made against Provisors, in express terms: And yet when the King of *England* Still. answer to Cressy, d. p. 339. ad p. 447. p. 449. comes to settle the points in difference, between him and Pope *Martin* the 5. *there is no manner of regard had to the Statutes of Provisors, although so often repeated*; nor did common practice agree with the positive and plain law.

But the testimony of *Petrus Blesensis* brought to prove the practice in the time of *Hen. 2.* I could set aside with better colour, than the Author of the Grand question does the true sense of *judicium* and *in judicio*.

For *Petrus Blesensis* joins together the *Principes Sacerdatum* and *Seniores Populi*,
the

Grand
quest. 7.
34

the last of which, in common acceptation, relates to the Laity; and for their withdrawing just at the final judgement, surely there could be no pretence from the practice of that age. But let's take his authority, and make the best of it. *Principes Sacerdotum & seniores populi licet non dictent iudicia sanguinis, eadem tamen tractant disputando & disceptando de illis: ideo seque immunes à culpâ reputant, quod mortis aut truncationis membrorum iudicium decernentes, à pronuntiatione duntaxat, & executione pœnalis sententia se absentent.*

Here he expressly confirms the sense, which I shall enforce, and makes the votings in the preliminaries, *mortis aut truncationis membrorum iudicium decernere.*

Some Clergy-men it seems did thus decernere iudicium sanguinis, and he blames them for it, but can their practice of any thing against law be an Argument that there was no law against such practice? And besides this being brought to shew the meaning of the constitution of *Clarendon*, which speaks only of the *Curia Regis*; this has no colour of a proof, because they might have handled such matters in their own Courts, where the King gave them *iudicium vitæ & membrorum*, as *Bracton* has shewn us; but that they did not in the *Curia Regis*, we are to believe, till express autho-

authority be brought to shew that they did.

One of the Editions of *Blesensis* has but *quidam*, some of them only could dispense with the obligation ; of what nature the obligation was, I shall soon shew, and will usher it in with the judgement of Mr. *Selden*, who was best acquainted with the several copies of this constitution, and with those laws which were the ground of it, perhaps of any man since the making the constitution. *The meaning of it is*, says he, *that all Bishops, Abbots, Priors, and the like, that held in Chief of the King had their possessions as Baronies, and were accordingly to do all services, and to sit in judgement with the rest of the Barons in all cases, saving cases of blood.* Titles of Honour, fo. 582.

The exceptions of cases of blood proceeded from the Canon Laws which prohibited Clergy-men to assent to such judgements. of Glocest. Bote war man shall be belemed

But we are told, that Hen. 2. in the Parliament at Northampton declar'd, that *Bishops were bound by virtue of the Constitution of Clarendon to be present, and to give their Votes in cases of Treason.* other to duth ido. Jani Anglorum facies altera, p. 100.

That this was only a *Curia Regis*, no Parliament, I have shewn. Grand quest. p. 40.

That it should be affirmed that the King then press'd the Bishops to give their Votes in a Capital case, (as the Author supposes every

P. 28.

Grand
quest. 7.
40.*Ejus sim-
plex Pro-
hibitio.*
Steph. MS.

every *crimen laesa Majestatis* then to have been), I wonder, because 'tis apparent from the circumstances that the King prest for a final judgement, and therefore could not urge that as the duty of their tenure, when even according to this learned man, the Canons prohibited their pronouncing final sentence, and the King at *Clarendon*, out of regard and reverence to the Canons of the Church, requir'd only that they should act in such causes, till the cause was ripe for sentence, not that they should stay at the Sentence: that point he was content to yield them; and he himself shews us out of *Fitz-Stephen*, that the Bishops look'd not on the matter as Capital, for they did not urge the Canons in the case; but they excus'd themselves upon the account of the Arch-Bishops prohibition.

And the King reply'd, that (*viz.* that Prohibition) had no force against the Constitution of *Clarendon*, which was in effect to say, you have no manner of pretence, no Canon forbidding you to pass judgement upon *Becket*, and therefore according to the Constitution of *Clarendon*, you ought interesse *judiciis Curiae Regis* at this time.

Notwithstanding the plain sense of all this, we find a very artificial management of *Fitz-Stephens*, and other authorities.

1. As

1. As if *Becket* were accus'd of a Capital matter, it being call'd *Crimen læsæ Majestatis*.

2. As if the crime he was accus'd of was appealing to *Rome*, and that such appeal was treason by the ancient Common law before any Statutes made. Grand quest. p. 40.

1. I will readily grant that in the language of that age *Becket* was accus'd or impeach'd of *Crimen læsæ Majestatis*; but that all *Crimina læsæ Majestatis* were then capital, *Glanville*, who was Chief Justice in that Kings reign, denies. ¹ *Crimen quod in legibus* Glanville de legibus lib. 1. c. 2.
dicitur Crimen læsæ Majestatis, ut de nece, vel seditione Personæ Domini Regis vel regni vel exercitus, occultatio inventi thesauri fraudulosa, placita de pace Domini Regis infracta, &c. Hereby every breach of the Kings Peace, was *Crimen læsæ Majestatis*; every breach of the laws by Acts of injustice is a breach of his peace, *contra pacem & Coronam*; therefore *Becket* having denied justice to *John* the Marshal, and refusing to answer the King who charg'd him in account, especially standing in contempt of the Kings Court, was guilty of this crime. Indeed *Glanville* when he has named Homicide, malicious firings, and other crimes, adds *Et siquæ sunt similia*; quæ scilicet crimina ultimo puniuntur supplicio, aut membrorum truncatione. As if no crimes

crimes were within this name, but those which drew after them capital punishment, but that is certainly to be meant of such as are not there specified : that is, all such like crimes, provided they are capital in the punishment annexed by law, are *Crimina laesa Majestatis*, though neither homicide, nor firing, &c. nor any direct and open breach of the peace.

'Tis evident that he confines not *placita de pace infracta* to homicide and those that follow ; for he takes in assaults and batteries *de verberibus, de plagis etiam*. Which he says are tryable by the Sheriff in default of Mesn Lords, unless the Indictment be in the Kings name.

Nisi accusator adjiciat, de pace Domini Regis infracta.

But it appears from *Fitz-Stephen*, that *Becket* was not impeach'd for appealing to *Rome*, even upon his second Impeachment, but *pro ratiocinio Cancellaria reddendo* ; to which he pleads, that the King remitted him when he was made Arch-bishop, that he then was *quietus & solutus ab omni Regis querelâ*.

But further, that he was called only to answer in the cause of *John* the Marshal, in which he complained that he had had hard measure, but for the last *neque in causâ sum ratiocinii ; neque aliquam habui*

*Stephani-
des. So
Gerr. De-
rob. f. 1389.*

bui ad eam citationem: still the King urges the *Proceres* to proceed to judgement against him, he finding them ready to comply with the King, appeals to *Rome*, and strictly enjoyns all his suffragan Bishops and others not to meddle in the matter.

Upon this, *redeunt ad Regem Episcopi & in pace à judicando Archiepiscopo excusati à Baronibus seorsim sedent, nec minus à Comiti- bus & Baronibus suum exigit Rex judicium: evocantur quidam Vicecomites & Barones se- cunda dignitat:is, &c.*

What is here like the pretence of his being accused in a capital matter, and the Kings urging the Bishops to judge him notwithstanding a capital accusation? Nay further, admit that he had been impeach'd of appealing to *Rome* (which 'tis evident both from *Fitz-Stephen* and *Gervase* that he was not) I question whether it had been capital then, or whether the Lord Cook says that *such an owning of the Popes* Grand Question, *Power was Treason, by the ancient Common* P. 40. *Law, before any Statutes were made; which I* conceive he do's not: The most which I find in him towards this point, is of a Cook de Judgement in the 30th of *Edw. the First,* Jure Regis Ecclesiasti- co. 5. Regi where 'tis resolv'd, that a subjects bring- ing in a Bull of excommunication against another subject, and publishing it to the Lord Treasurer of *England*, was by the

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anci

ancient Common Law of England Treason. Now this publishing a Bull of excommunication, and thereby assuming the exercise of justice without the Kings authority, is certainly a much greater offence against the Kings Crown and dignity, than barely the appeal: however either might have been *Crimina lese Majestatis*, against the Crown and Royal dignity, and yet not capital, as *Glanville* shews.

But this is further observable that the King himself appeal'd to the Pope in this very controversie between him and *Becket*.

Gervasius Dorob.

f. 1400.

Ex commu-

ni consilio,

nos inqui-

unt, eum ap-

pellabimus

coram Pa-

pâ, de faci-

li convince-

tur, sine re-

medio de-

ponitur, que

cum pluri-

mum place-

rent Regi,

exierunt

omnes Ep.

Gerv. Dor.

f. 1392.

Gerv. Dor.

f. 1387.

Hâc igitur celebri celebratâ & acceleratâ appellatione misit Rex, misit & Archiepiscopus nuntios ad Dominum Papam. And according to *Gerv.* the Bishops appeal'd to the Pope against *Becket*, with the great approbation of the King.

Wherefore the Article in the Constitution of *Clarendon* touching appeals, the first declaration that I find of the law in this point, comes not up to *Becket's* appeal.

De appellationibus si emerferint ab Archidiacono, debent procedere ad Episcopum, ab Episcopo ad Archiepiscopum, Et si Archiepiscopus defuerit in iustitiâ exhibendâ, ad Dominum Regem est perueniendum postremo, ut

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praecepto ipsius in Curia Archiepiscopi controversia terminetur; ita quod non debet ulterius procedere absque assensu Domini Regis.

This is of causes begun in ecclesiastical Courts, these were not to go further than the Archbishops Court, that is, not to the Pope without the Kings licence; now admit an appeal had been before the Pope with the Kings licence, yet it might have been *Crimen laesae Majestatis*, to put the Popes sentence in execution without new licence had: but where a matter lay not in these inferiour Courts, as *Becket's* did not, whether the appealing in such a case had been against the Law then, I make a doubt, I am sure it is not prov'd at least, that 'twas capital. I know not of any greater penalty than a *Premunire* ever annexed to it, till the Reformation. But if it were capital from the beginning, 'twould not be any thing to the purpose here, because *Becket* was not impeacht for appealing.

I cannot but charge this Author with a great deal of artifice in this place, and of much labour to reconcile things, as I should think, very disagreeing: he tells us that according to *Fitz-Stephen*, *Becket* was accus'd p. 25 of Treason, and the Bishops sate together with other Barons, and because it did not come to a Sentence of death, after a great debate between the other Lords and Bishops about pronoun-

Grand
Question,
p. 38.

ting the sentence, the Bishop of Winchester did it : here he jumbles together, what in another place he rightly divides, he takes it right that there were Two causes, the one that of *John the Marshal*, the other that which he would make capital ; in the first, the Bishops did certainly sit in judgement, there the Bishop of *Winch.* pronounc'd the sentence ; as *Mr. Selden* (who this Author confesses has printed the proceedings of this judgement very exactly) shews out of *Stephanides* : for this our Author do's not pretend that *Becket* was accus'd of Treason, and yet he says that the Bishop of *Winch.* gave sentence, where he was accus'd of Treason ; nay, though his own Author *Stephanides* is expresse, that upon the second charge, which contain'd the suppos'd capital matter, the Bishops withdrew, & *quidam Vicecomites & Barones secunda dignitatis* were taken into the Court.

Thus I think I have shewn that the King did not declare at *Northampton*, that the Bishops were bound by virtue of the Constitution of *Clarendon* to be present and to give their votes in cases of Treason, (as such were capital) but rather it not being a Capital case upon which the King demanded judgement, that therefore the Bishops were by that Constitution oblig'd to be there.

Ad.

Admitting that this constitution is no law prohibiting Clergy-men to Vote in Capitals, only obliging them to the duty of their tenure; and leaving them to act in matters of blood, according as they thought themselves bound by the Canons: Yet I think herein it appears that those Canons were received by the temporalty, and so became laws.

But not to insist upon this, the question here is,

1. First, What the Canon law prohibited.

2. What force that prohibition has at this day.

1. The Author of the Grand Question has I conceive misrepresented the sense of Lanfranc's Canon concerning this matter, which he has render'd thus:

That no Bishop or Clergy-man should condemn a man to death, or give vote in the sentence of condemnation. Here he confines the prohibition to the final judgement only; and yet says, Lanfranc had brought the Canon of the Eleventh Council of Toledo into England: So that Lanfranc's and that of Toledo he yields must speak the same thing; That of Toledo, is this:

His à quibus Domini Sacramenta tractanda sunt, judicium sanguinis agitare non licet; & ideo magnopere talium excessibus prohibendum.

Grand Question, p. 27.

concil. Tolosan. 11. cap. 6. Edit. Madr.

bendum est, nequi presumptionis motibus agitati aut quod morte plectendum est sententiâ propriâ judicari presumant, aut truncationes quaslibet membrorum quibuslibet personis aut per se inferant aut inferendas precipiant.

His à quibus Domini sacramenta tractanda sunt, undeniably reaches to Bishops, as well as inferior Clergy, and so removes the cavil which many make upon some Canons, or Laws, mentioning Clerk, or *Clerus* only.

Here 'tis laid down for a principle, *non debent agitare judicia*, they must not to debate upon such judgements, or try such causes, that is as *Petrus Blesensis* expresses it, *eadem tractare disputando & disceptando de illis.*

Now can we think the wise Council of *Toledo* understood sense so little to declare, that Clergy-men ought not to debate about, or try such causes, and therefore should prohibit only the final judgement? nay 'tis very clear that they, agreeably to the maxim they receive, forbid them *quod morte plectendum est sententiâ propriâ judicare*, to judge of, or try the matter, or cause in their own persons; not but that where the King gave them *judicium vite & membrorum*, as we find in *Linwood*, they might delegate authority to others to judge, without breach at least of after Canons. But
this

this of *Toledo* I conceive wholly shuts them out from the cause, or tryal of it. And according to this very Author, this Canon of *Toledo* is to be taken as explanatory of *Lanfranc's*, which is much shorter, and less express; yet comes to the same, in the signification of the words, as well as in the intention of the Council, which received the above-cited Canon of *Toledo*.

Grand
Question,
p. 27.

Lanfranc's we have in these words,

Iterum ut nullus Episcopus vel Abbas, seu quilibet ex Clero hominem occidendum, vel membris truncandis judicet, vel judicantibus sue autoritatis favorem accommodet.

Spelman's
Concil.
2 vol. f. 11.

This speaks of the man guilty of a crime worthy of death, or loss of member, the other of the cause, or matter; which are *tantamount*: but by this they were not to judge themselves; nor sit by, while others judge, or any way contribute to the Judgement. But of this the great Council at *Westminster* in the year 1175. is the best Interpreter. And if the Clergy-

An. 1175.
22 Hen. 2.

men neither before the constitution of *Clarendon*, nor by it, were excluded from meddling in these causes; they are by the last in full Parliament, the testimony of which is transmitted by us by no less an Author than *Gervase of Dover*, who liv'd in the very time, and whose credit this

Bb 4

learned

Pa. 30. learned Person supports by following him rather than *Matthew Paris*.

Ann. 1175. In hoc concilio, he tells us, ad emendationem Anglicane Ecclesie assensu Domini Regis & primorum omnium Regni hac subscripta promulgata sunt Capitula : amongst which the third is this,

Grand
Question,
p. 42.

Hoveden,
f. 543.

Hiis qui in sacris ordinibus constituti sunt, Judicium Sanguinis agitare non licet, unde prohibemus ne aut per se membrorum truncationes faciant aut inferendas judicent, &c. this is almost the same in words with that of *Toledo*, and by the concession of the Learned Author of the *Gr. Question* that of *Toledo* was then produced by *Richard Arch-bishop of Canterbury* : the same we find in *Hoveden*, said in the *Margent* to be *ex concilio Toletano*. *Judicium sanguinis agitare non licet*, surely comes up to the preliminaries, and I cannot understand the coherence of saying to this effect.

It is a received *Maxime* that Clergy-men ought not so much as to vote in preliminaries, relating to capital cases ; and therefore to give the final Judgement is only unlawful by the Canon, which declares that to vote, even in preliminaries, is unlawful.

In *Richard* the second's time , the Bishops understood not this nice reasoning, and therefore they enter their formal Protestation on Record,

Agitur

Agitur de nonnullis Materiis, that is Capital causes, in quibus non licet nobis aut alicui eorum juxta Sacrorum canonum Instituta quomodolibet personaliter interesse. Grand Quest. p. 46.

'Twas not so much because 'twas in Parliament, as because matter of Blood was in question. And indeed the Canons mentioning *Judicia Sanguinis*, that is Ordinary Judgements, such as were agitated in the Kings Ordinary Court of Justice, and the constitution of *Clarendon* referring only to that Court, it appears that these Constitutions were received in Parliament in the Reign of *Edw.* the first.

When the King ty'd up his hands from giving Clergy-men Power, even so much as by his special Commissions, to sit upon the tryals of such causes. We for the Utility of our Realm and for the more assured conservation of our peace have provided and ordained that Justices assigned to take Assizes in every County, where they do take as they be appointed Assizes, incontinent after the Assizes taken in the Shires, shall remain both together *if they be Lay.* And if one of them be a Clerk, then one of the most discreet Knights of the Shire being Associate to him that is a Lay-man, by our Writ shall deliver the Gaoles of the Shires. 28 Ed. 1. cap. 3.

Hereby it appears that if one of the Judges were a Clergy-man, he was not so much

much as to fit with the other upon the delivery of the Gaol ; that is the tryal of capital Causes ; but another Lay-man should be commission'd for that purpose. And agreeable to this we find in the Records of the *Tower*, that when two have been Commissioned as Judges for the same Circuit, whereof one has been a Clergy-man the other Lay, the Clergy-man has had only *Common-Pleas* in his Commission, the other both *Common-Pleas* and *Pleas of the Crown* : nor is it material that some Rolls may be found out purporting as if Pleas had been held before two whereof one hapned to be a Clerk ; for it is to be taken *reddendo singula singulis*.

(2.) This were enough to settle the 2^d point, *viz.* of what force such prohibition, as I have shewn, is at this day ; but I take leave to offer farther, what as I conceive may give yet clearer satisfaction ; which is, that the difference of an Ecclesiastical Synod from a Temporal Great Council, was not taken from the persons present in either, but the matters of which they treated, and the parties which managed there according to the different matters ; if Ecclesiastical Affairs, 'twas a Synod, if temporal, it had some other name, as *Commune Concilium Regni Anglia*, or the like to distinguish it by.

The

The great *Jewel* hath long since given Authority to this Assertion about Ecclesiastical Synods, which he calls *concilia Episcopalia*: *Ab Episcopis nomen concilia invenisse fateor, eoque dicta fuisse Episcopalia: quod Episcoporum judicio & prudentia omnia constituerentur. Sed tunc idcirco concilia hac nihil ad principem attinuisse colliges.*

Jewel contra Ward,
p. 518.

As the Ecclesiastical Laws were supposed to lay a more immediate Obligation upon the conscience, and were for the most part enforced by Ecclesiastical censures, they were called Canons or Rules, not having that outward coercion and penalties annexed which others had, but yet they were no less Laws.

The Statute of *Henry* the 8th. which provides *That no Canons, Constitutions or Ordinance shall be made or put in Execution within this Realme, by Authority of the Convocation of the Clergy,* does not in the least Abrogate, or Condemn those which were made by the Authority of the King, the Clergy, and the Laity: As I will not say all Ecclesiastical constitutions were, from the time of *William* 1. to the above-mentioned Synod at *Westminster*, it is enough if that alone were so.

And then if that be not repugnant to some Law since made, I conceive it is still in force, having had full Legal sanction.

For

For the clearing this 'will be necessary to shew something of the nature of the Ecclesiastical Councils according to the *Modus* establisht anciently in *Engl.* I must confess that several Historians, when they mention *concilium totius Angliæ*, speaking of an Ecclesiastical Council, add frequently, *Episcoporum, viz. & Abbatum, nec non & multarum religiosi ordinis personarum*, or to that effect. But Bishop Jewel has well Interpreted such Expressions, and therefore we need not wonder, when we find another say, *Lanfrancus Cant. Arch. & totius Angliæ Primas diversa in diversis locis Angliæ celebravit concilia.*

Ex Cod.
MS. in Bib.
Cot. sub Ef-
figit Domi-
tiani, A. 5.
n. 2.
Spelm.
Conc. v. 2.
f. 3.

Though to be sure the King were sometimes *jubens & presens*, as at the Council at *Winchester*. But it appears even by their own *modus tenendi synodos in Angliâ primævis temporibus*, which I take it was the same that was agreed on in *Lanfranc's* time, of whom *Malmsbury* says, *quæsit à senioribus Episcopis qui esset ordo sedendi in concilio Antiquo more statutus, &c.*

Malmsburyensis,
f. 118.

By their antient *Modus*, I say, it appears that the Laity were to be present in their Ecclesiastical Councils; for when it mentions the Clergy in order it adds,

Exinde introducantur Laici bonæ conversationis, that is probi homines, vel qui electione conjugali interesse meruerint, every Layman

man of good conversation, *probus homo*, or free-holder in his own Person, or *electione conjugali* by Joint-Election of the Clergy and Laity.

It would be superfluous to produce the many Authorities, which shew that the Laity used to be of Council in Ecclesiastical affairs, as well as the Clergy in Temporal, and to give their Assent in making Canons or Laws.

I will instance in some very remarkable ones out of many ;

One *Eadmerus* recommends with a solemn protestation, *En ordinem gesta rei teste conscientia mea veritate, sicut eam præsens audiivi & vidi, in nullam partem declinando descripsi.*

Matilda Daughter of *Malcolm* King of Scots married to *Henry* the first, being reputed a Nun, offers her self to be tryed by the Ecclesiastical Law, *Offert se Judicio totius Anglorum ecclesie probaturam.*

In another place,

Obtulit se vel sacramento vel alia quam magis eligerint ecclesiasticâ Lege probaturam, &c. At the day appointed there Assembled *Episcopi, Abbates, Nobiles quique ac Religiosi ordinis viri* : the case appeared to be that she had taken upon her a Nuns habit, but had never been profest ; whereupon *Anselm* having stated her case to the

tota

*Spelm.
Conc. vol.
2. f. 1.
Ex perven-
tibus MS.
Cod. in bibl.
Cot. sub ef-
figie Cleo-
patrae.
c. 8. f. 35.*

*Eadmer.
Hist. Nov.
f. 58.*

*Eadmer.
f. 57.*

tota Regni nobilitas populusq; minor, the Nobility and Commonalty, and in the name of God required them, Quatenus siquis aliter de negotio illo sentiret ac sententia tulerat (unde scilicet ipsam copulam secundum Legem Christianam fieri non debere posset ostendi) nihil hæsitans salvâ pace omnium coram proferret.

Here any man there had free leave to offer wherein he thought that marriage void by the Christian Law, or Law of Holy Church : but *cunctis unâ clamantibus rem justè definitam, legitime conjuncti sunt.* Had not this been to vindicate *Anselme*, who it seems lay under the imputation of marrying the King contrary to the Laws of Holy Church, possibly *Eadmerus* had never given us so full an account ; but he shews very particularly how those great Councils Acted, that 'twas in an intire Body ; the Assent was, *cunctis unâ clamantibus.* If any thing was offered, or pronounced in a Definitive Way, which was generally dislik't, *fremitu aspernabatur*, as we are elsewhere told of such Assemblies. If the Council was divided, *diversis diversa parti acclamantibus*, they were forc't to Adjourn or break up. Thus, as 'twas amongst the *Lacedemonians*, what was propounded was determined, *clamore non calculis.* We have the like Account of an Ecclesiastical

fiastical Synod in the 28th of the same King.

Gulielmus Dorobernensis congregavit generale Concilium omnium Ep. & Abb. & quarumcunq; religiosarum personarum, cui presedit ipse. This we see was an Episcopal Council, and the Bishop was President, but then *Confluxerant quoque illuc magna multitudines Clericorum laicorum tam divitum quam mediocrium, & factus est conventus grandis & inestimabilis,* here was a confluence of the inferiour Clergy, and the Lay-Lords and Commons, and the number was beyond Account.

Acta sunt ibi de Negotiis Secularibus nonnulla; being all met together, though upon Ecclesiastical affairs chiefly, yet they had *colloquium* about Secular too; and coming all in their own persons, (not by way of representation, when they that were chose to come instead of the rest, might receive certain Instructions according to the matter propounded for treaty, beyond which they had no power,) it was not needful that they should know beforehand what they were to treat of, but might fall upon any thing *pro re nata*.

Quaedam quidem determinata, quedam dilata, quedam vero propter nimium aestuantis turba tumultum ab audientia judicantium, profligata.

It

contin. ad
Flor. wi-
gor. An.
1127.
28 H. 1.

It seems they had appointed some Judges of the Pole, or rather of the noise, and the Crowd was so Vast, the noise so Confused, that of many things they could not make any certain Judgement; some things were determined by a General Acclamation, and others were Prorogued to a further day.

Qua autem communi Episcoporum consensu in ipso concilio decreta sunt & Statuta, sicut illic publicè recitata sunt & suscepta, in hoc opere placuit annotare, &c.

Here Ecclesiastical Matters were first debated, and settled amongst the Bishops, then they were publicly rehearsed, and either rejected, or *suscepta* receiv'd by the whole Assembly of Clergy and laity; but this was not enough to give them the force of a Law, they must have the stamp of Royal Authority to be Currant.

Rex igitur cum inter hac Londonia moraretur, auditis concilii gestis consensum præbuit & confirmavit statuta Concilii à Guilhelm. Cant. Arch. & Rom. Eccles. Legati apud Westm. Celebrati. At this time it seems the King was not in the Council, but the Canons, though drawn up by the Bishops, promulgated before and assented to by the Body of the Realm, yet had no force till Authenticated by the head of the Church and State.

Gervase

Contin. ad
Flu. f. 663.

Gervase of Dover is little less particular in the Account of the Ecclesiastical Synod in his time, wherein the Canons or Constitution declaring it unlawful for Clergy-Men, *Agitare Judicia Sanguinis*, was embodied into the Laws of the Land.

Ricardus vero Cant. Arch. totius Angliae Chronica Primas & Apostolica Sedis Legatus convocato clero Angliae celebravit concilium in ecclesia Beati Petri ad Westm. 15. Kal. Junii Dominica ante Ascensionem Dom. afficerunt in hoc concilio omnes suffraganei Cantuar. Eccles. prater Vigorniens. qui diem clauserat extremum. *Ger. Dorob. f. 1429.*

In hoc concilio ad emendationem Anglicanae Ecclesiae assensu Domini Regis & primorum omnium Regni hac subscripta promulgata sunt Capitula. Ad Dextram Primatis sedit Episcopus Londinensis quia inter Episcopos Cantuar. Ecclesia Suffraganeos decanatus praeeminet dignitate; ad Sinistram sedit Episcopus Winton. quia Cantoris officio praecellit: ceteri tam Episcopi quam Abbates secundum primogenit. consecrationis suae confederunt. *Ge v. b. ut sup.*

Ipse vero Archiepiscop. Primas, & Legatus residens in sublimi post sermonem quem tam facundè quam disertè fecit in communi de Scripto legi fecit Statuta concilii sui sub hac forma, &c. *N. this was according to the Modus tenendi Synodos, Secundum ordinationis suae tem-*

pus resideant, only that the Modus more particularly referred to the inferior Clergy in that.

C c

Here

Here it appears that their Councils were held by the Arch-Bishops of *Cant.* that the Statutes or Canons were drawn up in some private Consults of Bishops, but they took their force from the Assents of the King and all the *Primores Regni*, the Clergy and Laity of the Land; and that the third Canon by me cited, was a Statute. This to be sure and the other Ecclesiastical Councils abovementioned, were more than the *Curia de more*.

I cannot, as the Author of the *Grand Question* does, sum up the Arguments on both sides; for I know not one that hath yet been offered, against what I have gone upon, which may be thus represented in short,

1. That the Canons prohibit the judging in Capital Causes, and all Preliminary Votes too.

2. That these Canons were received by the great Council of the Nation, and so became incorporated into, and part of the Laws of *England*.

3. And that they, running in the terms of *Judicia agitare*, which in the common intendment is of Ordinary Justice, and the Constitution of *Clarendon* particularly referring to the Ordinary Court of Justice, except it can be shewn that Clergy-men Voted in the Ordinary *Curia*; the Court of Tenants and Officers
whilst

whilst that Court continued, there is not one President against this sense of the Law. If it be said they have Voted in Bills of Attainders which in effect are *Judicia Sanguinis*: Still these are not within the ordinary Justice; however if they are *Judicia Sanguinis*, in a strict sense, let them who are concerned, answer the evading the sense of the Law.

I shall give one plain instance of a great Council, and another of an Ordinary Court in this Kings Reign, and hasten to the next.

Circa festum Sancti Pauli venit Dominus Rex usq; Northampton & magnum ibi celebravit concilium de statutis Regni sui coram Episcopis, Comitibus & Baronibus terra, & coram eis per concilium Comitum & Baronum, Militum & hominum suorum hanc subscriptam Assisam fecit, &c. This was more than an Ordinary Curia, and there being the Barones terra; the Milites and homines sui are not to be taken for his feudal Tenents, but his Liege People.

For his Ordinary Curia we find a clear President in the Glossary of that great Antiquary Sir Henry Spelman, who if he had lived to finish the second part would certainly have given a compleat Body of Antiquity. We find in him the form of a fine

C c 2

levy'd

Hen. 2. Ad.
no 1176.
23 Hen. 2.
Benedictus
Abbas sub
effigie
Julii Ad.
f. 72. Int.
Bib. Cott.

levy'd in the Ordinary Curia.

33 Hen. 2.
Glos. Tit.
Finis.

Hæc est finalis conventio facta in curia Domini Regis apud Clarendum anno 33. Regni Regis Henrici Secundi coram Domino Rege & Joh. filio ejus, &c. & aliis Baronibus & fidelibus qui tunc ibi presentes erant, &c.

Richard the first was spirited to Jerusalem, and therefore we must not expect many instances from him of the one sort or t'other, but I am sure the Ecclesiastical Council at Pipewell in Northamptonshire, could not be the Curia de more. Sir Hen. Spelman calls it *Concilium Pambritanicum*, and Bromton tells us in general who were at it, amongst others there were all the Abbots and Priors of the Kingdome, but it is very manifest that they were not all Tenants in chief, many holding in *purâ & perpetuâ eleemosynâ*, and others of temporal Lords, as appears by the Statute of Carlisle, 34 Ed. 1. and therefore this was not a Court of the Kings Tenants and Officers only.

Poltons
Stat. f. 95.
Stat. Asportat. & Religioforum.

But then in November following he assembled a full Parliament at London.

Bromton.
f. 1165.

Rex congregatis Episcopis, Comitibus, & Baronibus Regni sui Parliamentum habuit & tractatum. This was manifestly more than the Curia Regis.

Anno 1189.
Bromton.
f. 1170.

A great Court was held the next year at Bury in Normandy, Ricardus Rex Angliæ Fæstum

Fest
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Festum nativitatis Domini quod secunda feria illo anno evenit in Normanniâ apud Burium cum primatibus terræ illius celebravit. It seems he had held another Court in *England*, for this was the second Court, but the great Council at *London* was not of either of the Feast days. But let us see whether this distinction is observable in the reign of that Prince upon whose Charter our dispute is.

This seems to have been a Great Council on the Court day.

K. John.

He was crowned in the presence of a larger representative than the Interpreters of his Charter have put upon us, *A populo terræ susceptus est.*

Anno 1199.
1 Jo.

Knyghton.
f. 2414.

King *John* in one of his Charters says, he came to the Crown *jure hereditario & mediante tam Cleri quam populi unanimi consensu & favore.*

Carta moderationis
feodi magni
sigilli
an. 1. Joh.
Ex Vet. Re-

Congregatis Arch. Ep. Comitibus & Baronibus atque aliis omnibus.

gistr. in
Archivis
Canc. Arch.

This explains who are meant by the *Magnates Regni*, which assembled at *London* in the second of his reign, which, the Historian not having mentioned any feast day, or saying barely that the King held his Court, is to be taken for the Great Council:

Ma. Par.
fol. 189.
Anno 1200.
2 Joh.

But the Records give further light, they shew us that there the Queen was Crown'd *de communi assensu & concordii Voluntate Arch. Episcoporum, Comitum, Baronum, Cleri & populi totius regni*: nor is it a wonder

Rot. cart.
5 Jo. m. 5.
n. 23. &
Rot. cart.
17 Jo. p. 1.
2. m. 3.
n. 2 s.

that the Queen being a Foreigner had such a formal consent of the people to confirm her Queen, for there had been at least the pretence of a law against any King of *England's* marrying a foreigner without the consent of the people, and therefore *Harold* pleaded against *William* the First, when he urg'd his oath for placing the Crown upon *William's* head, and marrying *William's* daughter, that he could not do either *Inconsultis Principibus*, or *absque generali Senatus & populi conventu & edito*: as another Author explains the Council, the consent of which *Harold* pleaded to be necessary.

Eadmerus.
fo. 56.
Malmesbury.
17. fo. 59.

From *London* King *John* issues out his summons to *William* King of *Scots* to attend him at *Lincoln*, which summons he was obliged to obey as one of his *Tenants* in *Chief*, but thither came more than *Tenants* in *Chief*, nor was it the place or time for the *Curia de more*, and therefore the *Curia* and General Council was united, the King of *Scots* coming as attendant upon the *Curia*, *Convenerunt interea ad colloquium apud Lincolniam*, *Rex Anglorum Johannes & Rex Scotorum willielmus cum universa nobilitate tam Cleri quam populi utriusq; regni Undecimo Kalendas Decembris*. As under the Nobility, the Senators of *Scotland*, were comprehended all the Freeholders

Mat. Ray.
196.

holders at that time beyond dispute, 'tis probable at least that our Nobility was of the same extent. And for the probability of the assembling of so great a body as the proprietors of both Kingdoms must have made even then, 'tis observable that the meeting was without the walls, for the City was not able to hold them. The King of Scots did homage upon a mountain in *conspectu omnis populi*, before all the people, the united body of Free-holders of both Kingdoms.

In the third of his reign this King held ^{3 Jo. 1201.} his *Curia* on *Christmasts* at *Guildford*, and ^{Mat. Par. Jo. 192} this was no more than his Military Council. *Multa militibus suis festiva distribuit indumenta*, (that is,) in festival bounty he gave many Coats to his Souldiers.

And that this was no more, is very evident in that the Arch-bishop of *Canterbury* to shew himself a Prince in the Ecclesiastical Empire set up the like Court of his Tenants and Dependants.

Hubertus verò Cantuariensis Arch. quasi cum Rege à pari contendens eodem modo fecit apud Cantuariam. ^{M. Par. Ed. Tig. f. 198.}

At *Easter* the King held his Court at *Canterbury*, where the Arch-bishop by sumptuous entertainment of the King hop'd to atone for his former Vain-glory.

On *Ascension-day* the King issues out his

summons from *Theokesbery*, for the holding his ordinary Court at *Whitfontide* following at *Portsmouth*, *Generale proposuit edictum ut Comitēs & Barōnes & omnes qui militare servitium ei debebant, parati essent ad Portesmue cum equis & armis ad transfretandum Pentec. ib. cum eo ad partes transmarinas in die Pentecostes iam instante.*

Those that would not pass the Seas with him consented to the payment of escuage Two marks of Silver upon every Knights Fee, *dantes Regi de quolibet scuto duas marcas Argenti.*

4. Joh.
Anno 1202.
M.P. f. 199.

The next year he held his *Curia* on *Christmas* in *Normandy*.

5. Joh.

And the year following this, he held his *Christmas* Court in *Normandy* likewise.

6. Ma. Par.
fol. 200.
Natale celebravit.

In the year 1204. his *Curia* was held on *Christmas* at *Canterbury*, from thence he went to *Oxford*, where were present more than the Members of the Ordinary *Curia*; *convenerunt ad colloquium apud Oxoniam Rex & Magnates Anglia.* Indeed what is then given the King is only from his feudal Tenants, but that is no argument that therefore no more were there, because the Council advis'd him to charge his Tenants; nay, 'tis very observable that the Historian does not say that they which were there assembled gave, but *ubi concessa sunt Regi auxilia militaria de quolibet scu-*

to *scilicet dua marca*, that is, there Escuage was given by or upon them, who held by Knights service, or it might be an aid given generally by every one according to the number of Acres, or value of his estate in proportion to the valuation of a Knights Fee. As was usually done in that and succeeding times.

And then I take it provision was made for the defence of the Kingdome, (*viz.*) that every Nine Knights throughout the Kingdome should find a tenth arm'd at all points to be ready *in servitio nostro ad defensionem regni quantum opus fuerit*: this to be sure reacht further than to the Knights by Military Tenure; because every one that held a Knights Fee was by his tenure to find a man, and consequently this would have been a weak'ning of the Kingdome to abate of their services, but it must needs have extended to all that held to the value of a Knights Fee, though not by Knights service. This was provided *Communi assensu Arch. Ep. Com. Baronum & omnium fidelium nostrorum Angliae*. And so a general Land Tax.

And at the same Parliament the King *per commune Concilium Regni* made an Assise of Money.

In the year 1205. he held his Court at Theokesbery which broke up the first day.

Soon

Ma. Par.
f. 201.

Rot. Pat.
6 Jo. m. 2.
dorfo.

m. 7. dorfo.

7 Joh.

Soon after he call'd together his army, that is, those who were oblig'd by their tenure to attend him; for though the *Curia de more* was confin'd to certain days, yet the King made the Court where-ever he pleas'd to appoint it, and the obligation to attendance at the Court was indefinite; his Military Council when met, refus'd to go with him beyond sea as he required, whereupon with a few of them he sets out to sea, and after he had coasted about a little, he exacted a great sum of money from those whose tenure could furnish him with a pretence for it, because they discharg'd not the duty of their tenure, *occasione prætendens quod noluerunt ipsum sequi.*

8 Jo. 1206.
Ma. Par.
f. 205.
M. West.
f. 266.

The next year he held his Court on *Christmas* at Oxford. The Historians give no mark of any thing more than an ordinary *Curia*, but the Records do.

Rot. Pat. 8
& 9 Jo. m.
3. verso.

There was a grant of subsidy upon every mans personal estate *per Commune Concilium & assensum Concilii nostri apud Oxoniā.*

This in another Record is said to be by the *Arch. Ep. Abbates & Magnates Regni nostri*, Rot. Par. 8 Jo. m. 1.

9 Jo. 1207.

On *Whitsontide* he held his Court at *Portsmouth*. In hebdom. *Pentecostes exercitum grand. apud Portsmouth congregavit.*

But

But then the *Christmasts* following at *Winchester* he held a General Council, and that was on the Court day. *Celebravit natale Domini apud Wintoniam presentibus* Archieps. Episc. Abates, Priores, Comites, Barones Milites & alii *Magnatibus regni. Deinde in purificatione beata Maria cepit per totam Angliam tertiam decimam partem ex omnibus mobilibus & aliis rebus tam de laicis quam de viris ecclesiasticis & praelatis cunctis, murmurantibus sed contradicere non audentibus.* magnates Regni Anglie. A. 37 H. 3. Fleeta. lib. 2. c. 42.

Here was a grant of what no way be-
long'd to tenure, and therefore all the
Magnates regni were privy to it, though
'twas done grudgingly. f. 212.

In the year 1208. he held his Court on
Christmasts at *Windsor*, where he distributed
coats to his Souldiers. 10 Jo. 1208.

He held his *Christmasts* Court at *Bristol*. 11 Jo. 1209.

He held a Great Council on the Feast
day at *Windsor* *presentibus omnibus Anglie*
Magnatibus. 12 Jo. 1210.

So the year following at *Tork* *presentibus*
Comitibus & Baronibus regni. 13 Jo. 1211.

1212. 'Twas but an ordinary Court
held at *Windsor*, *fuit ad natale apud Windsor.* 14.

1213. He held his Court at *Westminster*
with very few tenants *ad natale Domini*
tenuit Curiam suam apud Westmonasterium
cum paucis admodum Militum comitatu. 15 Jo.

In this year we find a Military summons
to more than tenants, and of an extraordina-
ry nature. *Misit*

Ma. Par.
f. 224.

Of being
reputed a
Turntail
or Run-
way.

*Misit literas ad omnes Vicecomites regni sui sub hâc formâ: Rex Johannes &c. Sum-
mone per bonos summonitores Comites, Baro-
nes, Milites & omnes liberos homines & ser-
vientes vel quisunq; sint & de quocunq; tene-
ant, qui arma habere debent vel arma habere
possint, & qui homagium nobis vel ligeantiam
fecerunt. Quod sicut nos & seipsos & omnia
sua diligunt, sint apud Deveram ad instant.
clausum Pascha benè parati cum equis & ar-
mis & cum toto posse suo ad defendendum ca-
put nostrum & capita sua & terram Angl.
Et quod nullus remaneat qui Arma portare
possit sub nomine Culvertagii & perpetua
servitutis. Et unusquisq; sequatur Domi-
num suum. Et qui terram non habent & ar-
ma habere possint, illic veniant ad capiendam
solidatas nostras. Hereby all free-men as
well as the Kings tenents, nay servants,
and all that ow'd allegiance to the Crown,
though not oblig'd to bear arms, if they
could get any, were required to give their
attendance, and those that had not where-
withal to maintain themselves should have
the Kings pay: this was upon expectati-
on of an invasion, and therefore the as-
sembly seems to have been as general as
the summons; but there is a shrewd cir-
cumstance to induce the belief that many
considerable men not holding in Chief,
thought themselves not oblig'd to atten-
dance.*

dance till necessity press'd them, for otherwise he would never have been terrified into a dishonourable peace, the parting with all his right of patronage to the Pope, and submitting to his pleasure, if he had not been sensible by the absence of many great men that there was truth in the French-King's boast, *Factat se idem Rex Chartas habere omnium ferè Anglia Magnatum de fidelitate & subjectione.* Mat. Par. f. 225.

But that this was not a general Council of the Nation appears by the Statute of Provisors which declares that the Popes assuming the *ius patronatus* was an incroachment, that is usurpation, or unlawful act, which it would not have been, if the *Comites, Barones, and turba multa nimis* that unanimously agreed to those shameful terms which King John yielded, had been enough to constitute a full representative of the Nation. Stat. 25 Ed. 3.

If they had been call'd to Council not to fight, then indeed upon knowledge that matters of general obligation were to be settled, though but few had come, they would have concluded the rest.

The Army as it was computed were about 60000, but that being made up of *Servants, Villains and all manner of people,* 'tis not to be supposed that there were there nigh the half of the proprietors, which Pryn's King John, f. 269.

which must have been present, to make any thing of general obligation without notice of its being so intended.

Of the same nature with this, was that shameful resignation of the Crown before mentioned near *Dover*, whereas the first agreement was at *Dover*.

fol. 230.

The same year *his Tenants* who were to maintain themselves in his Court and Army at their own charge, complain that he had kept them out so long that they had spent all their money and could follow him no longer unless he supply'd them out of the *Exchequer*.

19 1213.

Mat. Par.
fol. 230.

This year there was a Great Council at *St. Albans* where were all the *Magnates regni* and there was a confirmation of the laws of *Hen. the first*, whereas we find nothing of that nature at any *Curia* of the *Kings tenants* and Officers only.

45 Jo.
Ad natale
curiam su-
am tenuit,
apud Win-
deshores.
M. Paris
ed. Tig. f.
238.

The same year he held his Court on *Christmas* at *Windsor*, but a Great Council was held at *Oxford*, the Summons to which *Mr. Selden* produces, but says the Record of it for ought he had seen is without Example.

Titles of
Honour,
fo. 587.

Rex Vicecomiti Oxon salutem, precipimus tibi quod omnes Milites Balliva tua, qui summoniti fuerunt ad nos à die Omnium Sanctorum in quind. dies, Venire facias cum armis suis.

Upon

Upon this part 'tis observable, that there had been a general notice or Proclamation of the time when he would have those that ow'd him Military Service to attend with their Armes, but the place was not named, for they were to follow him whereever he would have his Court, and therefore herein was an apparent Grievance in some measure redress'd by his *Charter* Two years after in ascertaining the place of Meeting to Consult of Aids and Escuage; but besides these Tenants, there were others, *Corpora vero Baronum sine Armis singulariter & quatuor discretos Milites de comitatu tuo venire facias ad nos ad eundem terminum ad loquendum nobiscum de Negotiis regni Nostri. Teste me ipso apud. Witten 11 die Nov. Eodem modo scribitur omnibus Vicecomitibus.*

Thus much I take to be clear from it, that here was an union of the Ordinary *Curia Regis*, the Court of the King's Military Tenants, who were to attend with their Armes, and of peaceable Senators, in a great Council. If the *Barones* of whom the Sheriff was to take special care were only such as were *Barons* by tenure, 'tis not supposable, that contrary to the Obligation of their tenure, they should be ordered to come unarmed, whilst only their Tenants, or at least Inferiour Tenants

to the King had their Swords in their hands ; wherefore *Barones* here must be taken in the most large and comprehensive sense. But this is farther observable, that where the Summons was General to all the Arch-Bishops, Bishops, Abbots, Priors, Earles, Barons, Knights and Free-holders, yet there has been a special Inquest summoned or taken out of the Generality, as in the Summons to attend the Justices in Eyre. *Summoneas per bonos Summ. Omnes Arch. Ep. Abb. Pri. Comit. Baron. Milites, & libere tenentes de Balliva tua, & de quolibet villà quatuor legales homines & prapositum, & de quolibet Burgo Duodecim Legales Burgenses, &c.* And even agreeably to this Record of the 18 of King *John*, we find that in the 42 of *Henry* the third, it was agreed, that there should be *quatuor Milites Inquisitores*, four Inquisitors in every County, who were to be sworn in the County Court, to enquire faithfully into the business of every County, in order to represent it at Parliament, which has no semblance of their being the representatives of the Counties, only the presenters and methodizers of that business, to which the Great Council gave their Assent or Dissent.

From this time to the Great Assembly at *Rumney Mead*, I find neither a Great Council

Bracton
lib. 3. p.
109. b.
So Rot. Fi-
nium 8 H. 3.
m. 2. dorso.

The Head-
borough.

Rot. Pat.
42 H. 3.

cil nor *Curia* mentioned, that to be sure was of more than the King's Tenants, as I have already shewn; I shall only observe farther, that it consisted of that Army which was got together on both sides. On the peoples side was a very great Army *Comitum, Baronum, Militum & Servientium, Peditum & Equitum cum Communibus Villarum & Civitatum*; and after this, they had a great accession, by gaining the whole City of London, and all that were neutral before, and even most of those that had kept along with the King: upon this the King condescends to treat, the place is agreed upon, and accordingly *convenerunt ad colloquium Rex & Magnates*, who these were the Record tells us, and the Assembly was as General as the Concession on the King's side, *Concessimus omnibus liberis hominibus nostris Regni Anglia pro nobis & heredibus nostris in perpetuum, omnes libertates subscriptas habendas & tenendas eis & heredibus suis de nobis & heredibus nostris.*

Mat. Par.
f. 241.

Magna
Charta,
17 Jo. An.
1215.

Even this was a *Curia Regis* in a large sense, but not the ordinary *Curia*; and though 'twere the Common Council of the Kingdom, as 'twas the Assembly of the whole Community, yet not the ordinary Common Council, for that might be, and I need not scruple to say that it was, of the King's Tenants and Officers, which in that sense, and to the purposes

D d

for

for which of course it met, was the *Commune concilium regni*, yet like the Kings ordinary Privy Council, or his Courts of Justice long since settled at *Westminster-Hall*, they could exercise no act of legislation.

If it be said, that the charging Tenants with more than was due of custom were such an Act, by the same reason the power of making By-laws would argue a legislative power, and there would be a little Parliament in every Village.

Without re-examining particular instances I conceive 'tis obvious, that admit the ordinary *Curia Regis* at any time exercised a power peculiar to the *Great Council*, of which I dare boldly say there are very rare if any instances, such that it can be a firm'd with certainty this was an *ordinary Curia*, without a more solemn convention, or Summons; yet in irregular times many of them would not make one legal President, especially against so many declarations and confirmations of the antient laws, and free customs, as Princes either to obtain, or assure the Crown to them swore solemnly, inviolably to observe and keep.

If sometimes the marks of distinction between the *Curia Regis*, and the *Great Council* are not clearly apparent, in that the *Curia* only might be summon'd *ad colloquium*, and in that sense might be styl'd

Par.

Parliamentum, though not *Générale Parli-* Pat. 4
amentum, and the *Generale Parliamentum* Ed. 1. m. 14.
 might be, as indeed it alwayes was, *Curia* In primo
Regis, though not the *Curia de more* : Yet generali
 the certain difference is upon particular Parl. nostro
 instances; where the full circumstances post Coronationem.
 are set down, alwayes to be known. As
 the ordinary *Curia* consisted of the Kings
 Tenants, and Officers; and there appears
 no grievance worth publick notice to have
 lain on the last, nor on the first, as to their
 attendance at the Wars, or as a Court of
 Justice, the remedy was properly apply'd
 by King John's Charter, to that wherein
 they were uneasie, which was the assem-
 bling about the matters relating *ad servi-*
tia to their *services*, without convenient
 notice for time, or for the occasion; so
 that they might think it was only for
 matters of ordinary justice, which might
 go on well enough without them, when it
 was really to charge them in their proper-
 ties, by such as should appear, by design
 and contrivance, which was a great mis-
 chief.

Wherefore for this the redress was,

1. That they should have forty dayes *charta Jo-*
 notice. *hannis.*
2. That the time, place and occasion of
 meeting should be ascertained.

And then they that were there were
 justly concluded by the rest, and had no

reason to complain of the charge.

Thus I conceive, I have given a rational account of this *Charter*, and I question whether upon other grounds any man can reconcile it with the Records and Histories both before and since ~~the~~ *Charter* till the 49 of *Hen. 3.* when 'tis supposed that more than Tenants in Chief, which compos'd the *Common Council* here mentioned, were let into the *Great, or Common Council of the Kingdom.*

If they cannot, I conceive they must take my sense.

For, this *Charter* was either declarative of the law as 'twas before, or introductive of a new law.

If the first, then it must be interpreted by the Records and Histories both before, and since, till a time of change can be assign'd with some colour.

If introductive of a new law, then we must see what interpretation practice has put upon it ; not that the sense of a law is alwayes to be interpreted by practice, because then we should think, especially upon the several Statutes against Provisors, which were rarely executed according to the letter, that we could not judge of the sense of former laws by the plain words. But if the words will any way admit of a double sense, that sense is alwayes to be taken which agrees with constant practice,
espe-

especially if the sense inclines most towards the practice.

I have at large shewn the evident proofs, that to the *Great Council of the Nation* there us'd to come more than the King's *Tenants in Chief*, and consequently this very Charter confirming free customes of every particular the place, or of the inhabitants of those places. According to this Charter the Common Council of the Nation by law consisted of more than the King's *Tenants in Chief*, and that the Law was thus there is a very strong proof, which turns upon them who suppose that King *John's* Charter gives us the full form of the *Great Council*, and that none but the King's *Tenants in Capite*, made the Common Council or Parliament of the Kingdom till 49 *H. 3.*

In the thirty ninth year of *H. 3.* several years after he had granted and confirmed that famous Charter, which alone obtained the addition of Great, so that the *Magna Charta* or Grand Charter of *William* the first, *Hen.* the first, King *Stephen*, *Hen.* the second, and King *John*, all lost their names, and were swallowed up in that, the *Baronagium* or *omnes fere Angliæ Magnates* refused to give a Royal Aid, demanded of them, the ground of their refusal is very remarkable.

*An. 1254.
39 H. 3.*

*Mat. Paris
d Tig. f.
884.*

D d 3

Quod

Quod omnes tunc temporis non fuerunt juxta tenorem magna Carta sua vocati. This some would render and call King John's Charter, and that the complaint was, that the Peers had not their particular Summons according to the tenour of that Charter. Were it so, 'twould prove nothing for them that urge it; because it does not appear, but that the aid demanded might have been Escuage or Tailage, or both, which lay upon the King's Tenants only, such a Common Council as that Charter I conceive establishes. But it is *Carta sua*, not *Carta Regis Johannis patris Regis nunc*: 'tis the then King Henry the third's Charter, no man will say that 'twas the Barons Charter, and besides it was the *Great Charter*, and no other *Charter* then maintained that Epithete. But what puts this out of dispute is, that though *H. 3.*'s Charter was comprehensive of all the fundamentals of the Government, and was so many times confirmed, and explained where it was thought needful; yet there is not one clause referring to the Great Council of the Nation, but what leaves to every particular place, and the Inhabitants thereof all ancient Customes and Liberties; so that unless it be proved that such a *Commune concilium Regni* as is in King John's Charter, us'd to compose the Great Council exclusive of all others, (excepting what is implied in the general

general *Salvo* at the end) they must needs have referred themselves to the ninth Chapter of *Henry* the Third's Charter (which indeed is but a revival of the law affirmed in King *John's*.)

Whereby the *City of London*, all *Cities*, *Burroughs*, *Vills*, *Townships*, or *Parishes*, the *Barons* of the *Cinque Ports*, and all other *Ports* were to enjoy all their liberties and free customs. *Mag. Charta, cap. 9.*

That by *Ville* is meant *Parishes*, or *Townships*. I think may appear from *Doomsday* book, where *Villa* is taken for the next Division under an Hundred.

Hic subscribitur inquisitio terrarum quo modo Barones Regis inquirunt (viz.) per sacramentum Viccomitis scire & omnium Baronum & eorum Francigenarum & totius Centurie presbyteri Præpositi vj. Villani uniuscujusque Ville. *Legier Book of Ely. Hundr. d.*

Here are the Sheriff, the Great Barons, and Clergy-men and Headboroughs within every Hundred, and six Inhabitants of every *Villa*, Parish or Township, then follows an account of the several Lands and Tenures by Hundreds and *Ville* within those Hundreds. Now according to the ninth chapter of *Magna Charta* custom is to be the Legal Interpreter what was the Great or Common Council of the Nation, and as the whole Nation is made up of *Cities*, *Burroughs*, and *Parishes* or *Townships*,

they being the integral parts of every County, all the Counties of *England* were to be summon'd according to their free customes.

And methinks the right of the *Counties* for their coming to the *Great Council* and its being preserved under the free customes of the *Villa*, appears from the Plea of the men of *Coventry* the Inhabitants of that *Villa* in 34 Ed. 1.

They plead and their plea is allowed, That in the times of that King and of his Progenitors, which to be sure reaches to the custome before *Magna Charta*, they us'd not to be taxt as Citizens, Burgeffes, or Tenants of the Kings demesn, but only along with the Community of the County of *Warwick*, that is, with the whole County and not with the Cities, Burroughs, and antient demesn of the Crown. So that when the *Commune Concilium*, in K. *John's* Charter, or the Kings Tenants in chief, laid any charge or gave an *Auxilium* or aid, this could not affect them; but when they came, and agreed to any charge with the Body of the County, as part thereof, then they were liable, and no otherwise: and indeed the stream of Records of both *H. 3. E. 1. and E. 2.* evidently prove all this; but let us touch the Record, *Ex parte eorundem hominum Regi est ostensum quod cum villa prædicta, Civitas, Burgus, seu Dominicum*

Inter communia de Terminis sancti Michaelis, An. 34 E. 1. pro hominibus villa de Coventre.

Regis

Regis non existat, ut homines ville predictæ tanquam Cives Burgenses seu tenentes de Dominico Regis in aliquibus auxiliis, Tallagiis seu contributionibus Regi seu Progenitoribus suis concessis non consueverunt talliari, sed tantum cum Communitate Com. Warwic. &c.

No man will imagine surely the meaning of this Plea to be that the Vill or Town of *Coventry* was not lyable when the Kings immediate Tenants tax themselves only, but they were when such Tenants tax the whole County; for that would have been an admittance of a grievance beyond that against which they petitioned, for by that the Kings Tenants might have excused themselves, and have laid the burthen upon them who were not Tenants in Chief, so that it would have been their greatest advantage to claim the priviledge of being Tenants to the Crown, and in that capacity to have had a right and priviledge to be parties, and consenting to all charges and grants laid upon them, and given to the Crown: and for that they might have prayed in Aid and pleaded King *John's* Charter, nor should we have met with so many Records in those times, whereby so many pleaded off the Tenures in *Capite* as chargeable and burthenfome; nay even the tenure of *Barony* it self; but on the contrary every one would have given the King great summs
of

of money to have changed their tenures to have held in *Capite ut de Coronâ* (when indeed it clearly appears they did the contrary) because they not only could save their individual Estate, if they had the sole power of making Laws, and giving Taxes, but would have encreased and better'd them by their Services and Tenures, which capacitated them to lay charge upon all the Barons, Knights and Freeholders of *England* who held not in Chief and who were by far the major part, many of which held of the great Lords by such and such duties or payments *pro omni servitio*, and beyond that were not lyable without their own consents to be charged ; and all this is demonstrative if any will read over and consider the infinite number of pleadings in the Ages we speak of, *viz.* (for some few instances) that *A. B.* holds of *C. D.* of his Mannor of *E.* by paying 10 s. rent or one bow and arrow, or one horse, or the like, *pro omni servitio*, or holds of the Honour or Castle of *D.* to find one or more men *bene paratos cum Armis* to defend such a Postern-gate or such a Chamber there when summon'd by the great Lord *pro omni servitio*; but to charge them without their assent further, was to overthrow the very *Salvo* in the end of *Henry* the Thirds, and in King *John's* Charter, which runs thus.

Salva sint Archiepiscopis, Episcopis, Abbatibus, Pri-

Prioribus, Templariis, Hospitalariis, Comitibus, Baronibus, Militibus & omnibus aliis tam Ecclesiasticis personis quam secularibus omnes libertates & consuetudines quas prius habuerunt.

If King John's Charter, in the particular of which our dispute is, introduced a new law, then we must examine only what *Custom* or practice followed upon it, or who made the Common or Great Councils of the Nation from that time to the 49th of Henry the 3. that is, were of right to come, or to have notice of the Councils sitting *juxta tenorem magnæ Cartæ suæ*, as is insisted upon in the 39th of Henry the 3. as above mentioned. That they were more than *Tenants in Capite*, which made the *Commune Concilium* in King John's Charter, the Record of the 38th of this King Henry, where two for every County, besides Tenants in Chief; were summon'd, were enough to evince.

We there find Writs to all the Sheriffs of England, to summon the lesser Tenants in Chief, the *omnes alios qui in Capite tenent de nobis*, as in K. John's Charter, and two more to be chosen by every County respectively, the precepts recite (though 'twere *falsum & deceptorium*, as the Historian tells us) that the Earls, Barons, & *ceteri Magnates regni*, had promis'd to be at London with Horse and Arms, to go towards Portsmouth, in order to passing the Seas with the King for

Mat. Par.
f. 860.
Nota before the large and comprehensive acceptance of Magnates Regni.

for Gascony, against the French King who then was in war with King Henry.

Ret. Claus.
38 H. 3. m.
7. c. 12.
dorse.

Mandamus (says the Record) *quod omnes illos de Ballivâ tuâ, qui tenent viginti libratas terræ de nobis in Capite, vel de aliis, qui sunt infra atatem & in custodiâ nostrâ ad idem distringas*, which was to perform their personal services, which not requiring their crossing the Seas, here is a suggestion that 'twas by the advice of the Great Council. But besides the services of Tenants in Chief, who were to be out upon their charges no longer than forty days; the King wanted a supply of moneys to maintain them beyond that time, and therefore for this he directs a representative of the several Counties.

To the
Sheriff of
Bedford
and Bucks.

Tibi districtè precipimus quod præter omnes prædictos venire faciat coram concilio nostro apud West. in Quind. Paschæ prox. fut. quatuor legales & discretos milites de Comitibus prædictis quos iidem Com. ad hoc elegerint vice omnium & singulorum eorundem, viz. duos de uno Com. & duos de alio ad provid. unâ cum militibus aliorum Com. quos ad eund. diem vocari fecimus, quale auxilium nobis in tantâ necessitate impendere voluerint.

These were to come *vice omnium & singulorum*, instead or in the place of all the Free-holders of the County, which asserts their personal right: but further,

Et

Et tu ipse militibus & aliis de Com. prad. necessitatem nostram & tam urgens negotiam nostrum diligenter exponas & ad competens auxilium nobis ad prasens impendend. efficaciter inducas, Ita quod prasati quatuor milites prasato concilio nostro ad prad. term. Pascha respondere possint super prad. auxil. pro singulis Comitatus.

These were properly to come in the stead of all, for they were only *Deputies* to carry the sense of their Principals, the matter was to be propounded in the County Courts before the Knights there chose, & *aliis*, and the rest of the Free-holders; this whole assembly was to be moved to grant a large contribution, and the Knights were to make the tender of their present, before the King and his Council; if the County had wholly refused, the Knights had no power then to grant for them, so says the Record, for it was to be propounded to all, *Ita quod*, the Knights might answer for an aid from the County.

And it seems whether the Counties chose *Deputies* or not, or gave them not full instructions, the King was not able to work upon them that met at the place and time then appointed, but they broke up in great discontent.

Et sic cum summa indignatione tristes admodum Proceres recesserunt. Mat. Par. f. 859.

But if the Tenants in Chief made the Common Council of the Kingdom till

49 H. 3.

49 *H. 3.* and had a power to tax the rest of the Nation *de Alto & Basso ad meram voluntatem suam* : why this summons for a representative of the Counties?

The very next year, being the 39th above-mention'd, the King solicites them for Aid.

Mat. Par.
f. 884.

They tell the King he undertook that War against *France*, for which he demanded aid, *sine consilio suo & Baronagii sui*. And when some were for complying with the Kings Demands: they Answer,

That all were not call'd according to the Tenour *Magne Carta sua*, that is, of this Kings Great Charter. Now whether this were because many who were exempted from *Common Summons* (for many such there were by particular Charters) had not Special summons, *Singularim* from the King himself, or that he put a representative upon them, whereas they might plead that 'twas their free Custom to come themselves in person, or send as many as they pleased in their names, I need not determine; it being enough that here were more than *Tenants in Capite*. But a mighty Argument has been raised against *Inferiour Proprietors* or the *Barones, Milites & liberè tenentes*, which held not of the King, being part of the great or Common Council of the Nation, upon such records as mention their being,

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being summon'd *coram Concilio*. And in effect the force resolves into this, they are no part of the Kings standing Council, the Assistants to him and his Lords, or of his Common Council of Tenants and Officers in the *Curia*, therefore no part of the great or Common Council of the Kingdome.

To clear this, I need offer but one Instance of many.

At *Christmass* in the 6th of *Hen.* the 3. And 1221.
he held his *Curia* at *Oxford*, but 'twas more 6 Hen. 3.
than a *Curia de More*.

Tenuit curiam suam presentibus Comitibus Mat. Par. f. 298.
& *Baronibus Regni*, words of an extensive
sense, or *Ad natale Dom. fuit apud Oxoniam* Mat. West. f. 280.
ubi festa Natalitia solemniter cum suis Mag-
natibus celebravit.

We have a Record of a subsidy granted that year, probably in that very *Curia*,
Coram Nobis & concilio nostro presentibus Rot. Clauf. 6 Hen. 3. m. 7.
Arch. Cant. Ep. Com. & Magnatibus nostris
de Communi Omnium Voluntate.

Now many of these were members both of the standing Council and *Curia* too, and yet were *Coram Nobis & Concilio nostro*: but the meaning of it is, that this was granted either before the King and his standing Council, or the King in his *Curia* by all these, That is, here was a conjunction of all Councils in one, *adunatis Conciliis*.

But because here are only *Com. Bar. & Mag-*

Magnates mentioned as if here were not any but great Lords: 'tis to be observed, and cannot be denied by any Antiquary, that free-holders, and they that came from the Counties as the representatives of such, had the appellation of *Magnates*, even a long while after: and therefore much rather before, when Lands had fewer Owners, the Owners, especially such as came in their own persons, were *Magnates*.

In the 37 of this King in *Parlamento London. fo. Mat. Westm. p. 352. Rex Anglia R. Comes Norfolc. &c. cateriq; Magnates Anglia*, consented to the Excommunication of all the Violators of the great Charter. *Rex & Prædicti Magnates*, that is, as is explain'd by *Fleta* who was Judge in the 16th of Edward the First, *Archiepiscopi, Episcopi, Abbates Regni Anglia, Priores, Comites, Barones, Milites, & alii Magnates*: the Record goes on, *& Communitas populi protestantur publicè in præsentia Arch. Cant. nec non & Episcoporum omnium in eodem colloquio existentium.*

In cujus rei test: & in posterum Veritatis testimonium tam Dominus Rex quam præd. Comites ad Instantiam Magnatum & populi præsentium Scripto Sigilla sua apposuerunt. Here the *Communitas populi* were the *Communitas Civitatum & Burgorum*; for the rest were *Magnates*, the King and some Earls subscribed at the desire of the rest.

Per-

Inter Com-
munia Term.

S. Mich.

34 E. 1.
penes Re-
mem. Dom.

Toes. in

Scaccario.
Rot. Claus.

3 E. 2. m.
16. Rastalls
Statutis

p. 83. 15

E. 3. 25 E.

3. Stat. 27

E. 3. Statu-

tum Sta-
pule.

Rot. Pat.

37 Hen. 3.

m. 12. dorso.

Fleta f. 93.

Perhaps by this time they that suppose the *Commune Consilium regni* within King John's Charter to have been a *Full Parliament*, or Great Council, till the 49th of Henry the Third, will compound for their Notion, and will yield, That more than such often came to Council, but that 'twas of courtesie, and that the King's immediate Tenants alone could charge the rest, and often did.

For which they have two false grounds; though perhaps but one within the time we are now upon, yet both are worth notice.

1. They take it for granted, that the Lords us'd to answer for their Tenants in Benevolences out of Parliament; and upon this weak, and at least uncertain foundation, they build the Supposition, *That they at other times represented them in all Great and Publick Councils.*

2. (Which falls within the time) That it should seem by Record, that the immediate Tenants have charg'd others without their Consent.

1. To prove that the Lords answered for their Tenants, they run back as far as *William* the Second's Reign; when his Brother *Robert* sent to him to borrow Ten thousand Marks of Silver, proffering *Normandy* for Security for Repayment.

E e

The

The Bishops, Abbots, and Abbesses, brake in pieces the Silver and Gold Ornaments of their Churches, the Earls, Barons, and Sheriffs, *suos Milites spoliaverunt*, that is, robbed those which were under them; and 'tis a *fine President* for the *Right* of the thing, which carries *Sacrilege* and *Robbery* in the face of it.

Here the Sheriffs robb'd or took away from the *Freeholders* that were within their *Ballia* or *Balliva*, and the Lords took from the Tenants within theirs; wherefore if the Lords could charge their Tenants, the Sheriffs could the Freeholders: but I would fain see one President, that the Kings Tenants ever answer'd for them that were within their *Ballia*, further than the Sheriffs did for those within theirs, which at the most was as Collectors under the King, of what was duly charg'd upon their Tenants, but generally I take it, they did no more than certify how many held of the King within their Precincts, as the Jurisdiction of great Men extended its self within such a compass, they were best able to give the King an account of those that were liable to any payment within that *Ballia*.

And

And thus in *Henry* the Second's time, the King issues out his Precept, That *quilibet Praesul et Baro* should certifie *quot Milites tenerent de ipso Rege in Capite*; this was for *Eſcuage* towards the Marriage of the Kings Daughter; to which all that held in *Capite* were lyable, and here the great Lords were to certifie for the Resiants within the compass of their Leet or *Ballia*, though they held not of them; but of the King: upon such Certificate; according to the number they return'd; so many were enter'd in the Exchequer Rolls, under the name of such a Lord; and thus we find it expressly in the Case of the Prior of Coventry.

*Compertum est in Rotulo 29 Regis H. ter-
tiii sub titulo de auxilio ad primogenitam
filiam Regis maritandam, viz. de quolibet
Scuto 20 s. Contineri sic. Prior de Coven-
try reddit compotum de 10 l. de decem feodis
de quibus quidem decem libr'. Willi' Tunstall
Vic. dicti Comitatus in compoto suo de Anno
32 ipsius Regis H. oneratus fuit.*

*Inter Com-
munia de
Term. Mich.
Anno 28
Ed. 1. Rot.
27. dorso.*

*Communia
de Term.
Sancti
Hil' Anno
17 Regis
Ed. 3. pe-
nes Remem.
Regis in
Scaccario.*

Here so many Knights Fees are enter'd under the Prior's name, but the Sheriff collected for them.

Upon this the Prior pleads,

*Hoc ei non prejudicat in hac parte, dicit
enim quod auxilia illa non fuerunt nec cen-
seti possunt esse servitia, imò quadam subsi-*

E e x

dia

dia per Magnates et communitatem régni spontaneâ et merâ voluntate Regi concessa, et tam de tenentibus aliorum quam de tenentibus de Domino Rege levanda.

'Tis observable, the ground of demanding for so many Knights fees was the entry on the Roll in the 29th. of Henry the 3d. and he pleads, That at that time the *Communitas Regni* were Parties to the Grant, and that it was charg'd by, and lay upon more than *Tenants of the King in Chief*, but that he was chargeable upon the account of Aid or Service with but two Knights fees, which he says may appear by the Certificate of the then Prior, *De feodis quæ ipse tunc Prior tenuit de veteri feoffamento*, that is, the number of Knights with which he was to serve, according to the first infeodation from the Crown, & *de novo*, which is the number of Knights fees rais'd under him by sub-infeodations, the first were all that he could be answerable for, but the second could not be charg'd without their own consent, the charges upon such were, *Quædam subsidia per magnates & communitatem Regni spontaneâ & merâ voluntate Regi concessa*. And thus we find the Records,

(1.) That the Kings Tenants were answerable no farther than according to the *vetus feoffamentum*. So

So in the 26th. of Henry the 3^d. The Sheriff is requir'd to shew cause why he distrain'd a man for two Knights fees, who pleads that he held but one, *de veteri feoffamento. Monstravit, &c. Quod cum non teneat de veteri feoffamento nisi feod. unius Militis in comitate tuo tu exig. &c. Quantum pertinet ad feod. duorum Militum & eâ occasione averia sua cepisti, &c.*

Inter Communia de Term. Pasche penes Rem. in Scaccario.

(2.) That Lords of Mannors could not charge their Tenants without their consent.

Rex omnibus & liberè tenentibus de Episcopatu Lond. Reciting the great Debts which the Bishop had contracted in the Kings Service, the King earnestly entreats the Bishops Tenants to make a contribution towards the supply of his necessities, which surely need never have been, if the Bishop had by virtue of the Feudal Law, Power of charging his Tenants, or raising upon them what he had pleas'd.

Rot. Pat. 6. H. 3.

Unde vos affectuosè rogamus quatenus amoris nostri intuitu efficax ei faciatis auxilium ad debita sua quibus pro favore nostro honoratus est. Ita quod exaudita in hac parte prece nostrâ precibus vestris pro loco & tempore nobis porrigendis aures benignas exhibere debeamus.

E e 3

(3.) When

Rot. claus.
19. H. 3.
m. 6.

(3.) When there was a Grant of more than from the Kings immediate Tenants, whose Grants were in the nature of Services, if it reacht beyond the *vetus feoffamentum*, 'twas *Spontanea voluntate suâ & sine consuetudine*.

(2.) But there is a knocking Record which I wonder I find no where insited upon, to prove the Kings Tenants to charge others.

Rot. claus.
19. H. 3.

Sciatis quod Arch. Episc. Abbates, Priores, Comites, Barones & omnes alii de Regno nostro qui de nobis tenent in Capite spontaneâ voluntate suâ & sine consuetudine concess. nobis efficax auxilium, &c. Unde provisum est quod habeamus de singulis feodis militum & wardis quæ de nobis tenent in Capite duas marcas ad pred. auxilium.

Here was a Grant only from Tenants in Capite, and yet it may be urged, that other Records explaining this, shew, That the Grant reacht to the *novum feoffamentum*, as well as the *vetus*.

But it will be said, That I make an Argument for them, which they are wiser than to offer, since the Records of this very cleerly overthrow it; yet if there be no better, I may offer this, that they may cultivate and improve it.

The matter of Fact, I take it, was, That the

the *Tenants in Capite* Granted by themselves a charge upon the *vetus feoffamentum*, and the Record which mentions their Grant goes no farther, but another Record of a Grant from Ecclesiastick Tenants in Chief is more exprels, and explains the other.

Cum peteremus à Prælatiſ Angliæ quod nobis auxilium facerent, pro magnâ neceſſitate noſtrâ de quâ eis conſtabat, viz. Epif. Abbatibus Abbiſſis, Prioribus & Prioriſſis quide nobis tenent in Capite ipſi nobis liberallyter conceſſerunt auxilium tale, viz. De ſingulis feodis Militum ſuorum 40 s. de tot feodis de quot ipſi tenentur, nobis reſpondere quando nobis faciunt ſervitium militare.

Rot. Pat.
15. H. 3.
m. 3.

Nota
Women
granting.

This is exprels, That the Tenants in *Capite*, Granted only for ſo many Knights fees as were of the *vetus feoffamentum*, that is, ſo many as they were to answer for, when they were to perform their Military Services to the Crown.

But whereas in the 19th. the Tenants in *Capite* were ſaid to have made ſuch a Grant, and at the ſame time there was a Grant which reacht to the Tenants *de novo feoffamento*, the Record mentioning that, ſhews us that more than Tenants were Parties to the Grant.

Rex Vic. Somer. Salutem ſciatis quod Comites & Barones, & omnes alii, de to-

Rot. Claus.
19. H. 3.
m. b.

to regno nostro Angliæ spontaneâ voluntate suâ & sine consuetudine concess. nobis efficac auxilium ad magna negotia nostra expediend. unde provisum est, de consilio illorum quod habeamus de singulis feodis quæ de nobis tenent in Capite & de wardis tam de novo feoffamento quam de veteri duas marcas.

Whether the Tenants in Capite Granted at this Council by themselves, or all agreed in one Body, is not material, but here is a grant from all, jointly or severally; I will shew one Instance, which is barely of such a *Commune concilium Regni*, as King John's Charter exhibits.

Inter Communia de
Term. Sancti Mich.
Anno 42.
H. 3. Rot.
4. de scut.
levand.

Rex Bar. Quia per commune concilium Com. Baronum & aliorum Magnatum nobiscum in Walliâ nuper existentium provisum est. quod nos & ipsi qui servitium nobis fecerunt, ibidem habeamus scutagium nostrum, viz. De Sicutâ 40s. pro exercitu nostro Wall' anno Regni nostri 41. vobis mandamus quod de omnibus feodis Militum quæ tenentur de nobis in Capite vel de Wardis in manu nostra existentibus exceptis feod. illorum qui brevia nostra habuerunt de scutag. suo habendo levâri fac. scutag. nostrum.

Here was a Common Council of Tenants, such as according to their obligation of their Tenure, had attended the King in his Wars, and they laid Escuage upon them which did not perform their Services

ces due, which still were only Tenants in Chief, and the Tenants of the King's Wards which were liable to the same Service, and they which made default, were to pay Escuage to the King, which he says was to his Tenants too, in as much as he out of that satisfi'd their charges beyond the duty of their Tenure.

I think I have clear'd my way to the treasury of Records in this Kings Reign, which acquaints us with the Members of the Great Council of the Nation.

As before is observ'd, for the obtaining ^{2 H. 3. or at least 9.} *Magna Charta*, and *Charta de Foresta*, the *Arch. Episc. Abbates, Priores, Comites, Barones, Milites & liberè tenentes & omnes de Regno* Granted a Subsidie.

There is a Grant of Carvage, which ^{Rot. claus. 4 H. 3. m. 5.} *Bracton* says, us'd to be *consensu Communitatis totius Regni*, not being a Service, or such as Tenants only us'd to charge or pay the Reward, has it, *Omnes Magnates & fideles totius Regni nostri*, Granted *de qualibet carucatâ duos solidos*.

The King in his Letter to the Pope, ^{Bundela literarum in Torre Lond. A. 8 H. 3.} says, That he had Summon'd to *Norhampton*, *Arch. Episc. Abb'es ac omnes Magnates totius Regni*, to give him *concilium & auxilium*.

The King undertook a Foreign Voiage, ^{Rot. claus. 14 H. 3. M. 2. dorso.} *De communi concilio omnium Comitum & Baronum nostrorum Angliæ.* A

Rot. Claus.
16 H. 3.
M. 2. dorso.

A Fourth part of their Moveables is Granted by the *Archiepiscopi, Episc. Abbates, Priores & Clerici terras habentes quæ ad Ecclesias suas non pertinent, Comites Barones, Milites, liberi homines, & villani de Regno nostro.*

The Clergy that were Landed-men or Free-holders.

So that 'tis plain here, who made the *Comune Conciliū Regni*, and gave the Subsidie, the Arch-Bishops, Bishops, Abbots, Priors, inferior Landed Clergy-men, the Counts, Barons, Knights, Free men, it being a Grant of Goods not lay'd upon Land; and that it may fully expresse the Parties to the Grant, the Record tells us there were the *villani* the Inhabitants of every *Villa*. A Provision about the Sheriffs Turns, Hundred-Courts, Wapentakes, and the Courts of Lords of Mannors was

Rot. Claus.
18 H. 3.
pars unica.
M. 10.

De communi concilio domini Cant. & omnium Episc. Comitum, & Baronum & aliorum.

Rot. Claus.
19 H. 3.
M. 6.

Comites & Barones & omnes alii de toto Regno nostro concess. nobis efficax auxilium, &c.

Rot. Claus.
18 H. 3.
M. 3. dorso.

It is provided, *coram venerab. Patre Cant. Arch. & coram Majori parte Episc. Comitum & Baronum totius Regni nostri Angliæ*, that no Assize of *Darrein Presentment* shall be taken of any Prebendary belonging to a Cathedral Church.

At

At a Parliament, Cum ad mandatum nostrum convenirent, apud West. Archiepisc. Abbates, Priores Comites & Barones totius Regni nostri & tractatum haberent nobiscum de statu nostro & Regni nostri, They grant a Subsidy Archiepisc. Abbates, Priores, & Cler' terras habentes qua ad Ecclesias suas non pertinent. Comites, Barones, Milites, & liberi homines pro se & suis villanis 30. m. partem omnium mobilium suorum.

Rot. claus.
21 H. 3.
M. 7. dorso

Nus volens & otroiens ke ce ke nostre — la greignure partie de eus ki est esluz paramis & par le Commune da nostre Roiaume a fet u fera al honir de dieu & nostre foi & pur le profit de nostre Roiaume sicum il ordenera seit ferm & estable en tuites chesel a tuz jurz commandous a tuz noz faus & leaus en la fei kil mis devient kil fermement teignent & jurgent a tenir & meintener les establissemens que sunt fet u sunt a fere par l'ariont dit Conseil.

Rot. Pat.
24 H. 3.
M. 1.

This agrees with what was done afterwards, in the 42d. of this King, and it seems by this, that even in the 24th. par le Commune de nostre Roiaume, by the whole Realm or Great Council, the King had a special Council Assigned, which was to have an extraordinary Power.

Magnates

Rot. Claus.
29 H. M. 8.
disfa.

Mat. Par.
Anno 1246.
vid. more
at large

Mr. Pettit's
Rights of
the Com-
mons of
England,
Asserted
from 111,
to 115.

Rot. Claus.
32 H. 3.
M. 12.
disfa.

Rot. 42 H.
3. M. 3.

Rot. Pat.
42 H. 3.
M. 10.

Rot. Pat.
42 H. 3.
M. 4.

Magnates nostri ad sedem Apostolicam appellarunt & quosdam pro universitate totius Baronagii Angliæ ad concilium in brevicelebrandum ad appellacionem predictam prosequendam duxerunt destinandos.

The *Barnagium* here according to *Mat. Paris*, were, *Barones, Proceres & Magnates, ac Nobiles Portuum maris habitatores, nec non Clerus, & Populus universus.*

The Pope had order'd, *De Apostolicâ sede*, that a Years profit of the Churches which were of the gift of Laymen, should be settled by way of Subsidy upon the Church of *Canterbury*; but 'twas deny'd in full Parliament.

Magnates terra nostra noluerunt in ultimo Parlamento nostro quod fuit London ut de Ecclesiis ad donationem laicorum spectantibus &c.

In Parlamento nostro Oxon. communiter fuit Ordinatum, that was about settling and new modelling some things relating to the Government, which the King promiseth should be done, *per concilium proborum et fidelium hominum nostrorum regni Angliæ unâ cum consilio Legati Domini Papæ.*

Pur le profit de nostre reaum et a la request de mes hanz homes e prodes homes e du Comun de nostre Reaume.

The

The King and People having in the 42^d. agreed upon a standing Council, and that what they did in the way of Settlement, should be effectual, and acquiesced in on all sides.

Cum &c. promiserimus predictis proceribus et Magnatibus nostris quod reformationem et ordinacionem per predictos viginti quatuor vel maiorem partem eorum faciendam ratam habebimus et firmam. &c.

Hereupon in the 45th they order a representation of 3. for every County, pro ea vice, but do not yet settle it for a standing Rule.

Cum ex parte Episcopi Wign' Com. Leicest' & Gloucest' ac quorundam aliorum Procerum Regni nostri vocati sunt tres de singulis Comitatus nostris quod sint coram ipsis ad Sanctum Albanum secum tractaturi super communibus negotiis regni nostri.

Rot. Clauf.
45 H. 3.
M. 6. dorso

Here the Lords of the Council exceeded their Power, and, as if the King were a Cypher in the Government, would have the Knights from the several Shires come before them; the King, not without reason, jealous of his Honour, commands, That they which had been summoned to St. Albans, should come to him at Windsor.

Nobiscum super premissis colloquium habituros.

Venerab.

Rot. Pat.

48 H. 3.

M. 2. N. 5.

*Venerab. Pater G. Eboracensis Arch.
Anglia Primas et alii Pralati Magnates
Milites liberè tenentes et omnes alii de regno
nostro servitium fecerunt et auxilium ultra
quā tēporibus retractis in aliis sūmmonitioni-
bus exercitus nostri facere consueverunt.*

This the King promises should not be drawn into consequence ; upon an extraordinary occasion they that were not accustomed to perform Military Service, did it then ; and they that did owe Services, did more than they were oblig'd to by their Tenure ; all, as well those that held not of the King in Chief, as those which did, joyn'd together and made a general charge upon the Kingdom of *Subsidium et auxilium.*

Anno 48th.

H. 3. 1264.

Rot. Pat.

48 H. 3.

pars unica.

M. 8. dorso.

N. 10.

In the 48th of this King, there was a right Understanding between him and his People, the Record sayes, *Hæc est forma pacis a Domino Rege et Domino Edwardo filio suo Pralatis et Proceribus omnibus et Communitate regni Angliæ communiter et concorditer approbata, &c.*

Amongst other things, 'twas agreed, *Ad reformationem status regni Angliæ,* That they should chuse 3 men who should have power from the King to name Nine that should be the Kings standing Council ; and if any of the three displeas'd the Community, *si videatur Communitati Prelatorum*

latorum et Baronum, one or more was to be plac'd in their room, *per consilium Communitatis Prelatorum et Baronum*.

And the Record concludes, *Hac autem Ordinatio facta fuit apud London de consensu voluntate et precepto Domini Regis necnon Prelatorum, Baronum ac etiam Communitatis tunc ibi presentium*.

The Council so chose as aforesaid, were to advise the King in *hiis que spectant ad Regimen Curia, et regni*.

And at that time, or immediately upon it, *Rex Statuit et ordinavit*, as Mr. Camden tells us, whose authority I shall enforce, That none of the multitude of Barons should come to Parliament, but they to whom the King vouchsaf'd to send his Special Summons, or were chose by the People, in pursuance of the *alia illa Brevia*.

What I have already drawn from the bowels of Antiquity, makes me think that Mr. Selden was arriv'd to this maturity of Judgment, when he put out the first Edition of his Titles of Honour; wherein he received without doubting the Testimony of the learned *Clarentius* Mr. Camden, concerning the new modelling of the Great Council of England, which Mr. Camden tells us, he has out of an Author old enough to know the truth of his Assertion;

Vid. Rot. claus. 28

H. 3. M.

12. dorse.

Considera-

tum fuit in

Curia no-

stra coram

nobis & to-

to Parlia-

mento no-

stra.

Titles of

Honour.

p. 278.

Ex satis

antiquo

Authore lo-

quor.

Affertion; upon this authority; Mr. *Selden* took it then *pro concessio*, that the alteration was as is there shewn, and began in the 48th of *Hen.* the Third, and that the first Summons accordingly was the 49th; which he illustrates by the like many years after in *Scotland*.

anno.
1427. 23.
fac. i.

Item, The King with the Consent of the hail Council generally, hes Statute and Ordained, That the *small Barones*, and *free Tennentes*, neid not to come to Parliaments nor General Councils; swa that of ilk Shirefdome their be send, chosen at the head Court of the Shirefdome, twa or maa wise men after the largeness of the Shirefdome. All Bishops, Abbots, Priors, Dukes, Earls, Lords of Parliament, and Banrets, the quhilks the King will be received and summon'd to Council and Parliament, be his Special Precept.

This I conceive is an illustration of Mr. *Camden's* Authority.

Ordines
Angliz.
p. 122.

Ad summum honorem pertinet, speaking of the word *Baro*. *Ex quo Rex Henricus ex tantâ multitudine quæ seditiosa et turbulenta fuit optimos quosq; rescripto ad Comitum Parliamentaria evocaverit: ille enim, (ex satis antiquo authore loquor) post magnas perturbationes et enormes vexationes inter ipsum Regem, et Simonem de Monte-*

Monte forti & alios Barones motas, & sopitas statuit & ordinavit quod omnes illi Comites & Barones Regni *Anglie* quibus ipse Rex dignatus est brevia summonitionis dirigere venirent ad Parlament' suum, & non alii nisi forte Dominus Rex alia illa brevia dirigere voluisset, sed quod ille paulo ante obitum incepit Ed. 1. ejusq; Successores constanter observarunt, unde illi soli Regni Barones censebantur qui ejusmodi summonitionum ut vocant rescriptis ad Comitiam evocaverant, donec R. 2. Joannem de Beauchamp de Holt Baronem de Kidderminster diplomate dato 10. Octob. anno nostri sui 11. creaverit.

The substance of this is, that the word *Baro*, was applicable to the whole people, the Body of Free-holders, especially as assembled in Parliament; till the King confer'd particular Honour upon some by his especial Writs of Summons, and none other came, but in pursuance of the *alia illa brevia*, that is, the Writs for Elections in Counties, Cities, and Boroughs: that this was begun to prevent those Tumults, of which both the King, and the Barons, had Fatal experience.

That this was Enacted in due form of Law; though the Form is not express'd, yet 'tis imply'd under the *Statuit & ordinavit*, being words of Legislation, and

F F

for

for confirmation, that it was so, it has been followed ever since: And that the Barons by Creation, who have ever since their Creation had Right to sit as of the higher Order previous to their sitting or express Summons, came not in till the 11th. of Richard the Second.

Against this Mr. Selden, whose insight into Records and MS's made him take it ill that any should escape his view, has rais'd these objections.

Titles of
Honour,
fol. 589.

(1.) *In all occurrences that I meet with, since the Grand Charter of King John, I find no mention of any interest that those other Tenants in Chief, eonimine, had in Parliament, who doubtless were the Persons that were excluded from it, when soever such Law was made.*

Tanti viri pace, This objection comes not nigh the point, it not being prov'd at least, that King John's Charter gives the Form of a Parliament or General Council, or of any other than a Council of the Kings Tenants, for matters belonging to their *Tenure*: and this sense Mr. Selden himself confirms, when he says, that he finds not that the *Minores Barones* in Chief, or *those other Tenants in Chief, eonimine, had any interest in Parliament*; now not having any peculiar interest, what need of a particular exclusion?

(2.) *Be-*

(2.) Besides, we have some good Testi- Titles of Honour. f. 389, 590.
 many of Barons being distinguish'd by hold-
 ing in Chief, from others that held not in
 Chief, long before the end of Henry the
 Third, or the time to which that ancient Au-
 thor refers the Law of alteration, which
 seems to shew, that there were then Barons
 by Writ only; as well as ancient Barons by
 Tenure: That Testimony in Mat. Paris,
 Rex edicto publicè proposito (saith, he,
 speaking of the 29th. of Henry the Third,
 Et submonitione generaliter factò fecit
 notificari per totam Angliam ut quilibet
 Baro. tenens ex Rege in Capite haberet
 prompta & parata Regali præcepto omnia
 servitia militaria, quæ ei debentur tam
 Episcopi & Abbates quam laici Barones.
 Barons holding in Capite are mention'd here
 as if some held not so, which must be such
 as were Barons by Writ only.

Thus much he yeilds here. If there
 were not Barons by Writ, there being in
 those times other Barons besides Barons
 by Tenure, Mr. Camden and his Author
 were in the right, and the word *Baro*, was
 of large extent, that is reacht to every
Free-holder, who according to Sir Henry
Spelman, had that appellation.

However it does not follow, because
 there were other Barons besides Barons
 by Tenure, that they must be by Writ,

Glos. tit.
 Baro. Pro-
 ceres nempe
 & maneri-
 orum Domi-
 ni nec non
 liberè quique
 tenentes, hoc
 est fundor-
 um propri-
 etatis
 Anglicè
 Free-hold-
 ers, hoc no-
 mine conti-
 neri vide-
 tur anti-
 quis pagi-
 nis.

for what hinders, but that they might have been by reason of their *Possessions*, and the freer from Feudall Tenure, so much the rather *Barones*, as Free-men.

The distinction of *Barones Majores* and *Minores*, I take it has been moveable, sometimes all the Tenants in Chief were *Majores*, as in *Henry* the Seconds time, where the *Barones Secunda dignitatis*, that is, *Minores*, are added to sit upon the Judgments with the Tenants in Chief: In King *John*'s time we find *Majores Barones* holding in Chief, & *alios*, so that, the Estates of the Great Barons being parcel'd out, some that held immediately of the King, were *Minores Barones*, by reason of the smallness of their Estates.

But this is clear from Record, That Writs of special Summons made none Barons out of Parliament, whatever they did in Parliament, except where there was such an unusual Clause as we find in a Writ of Summons, 27 H. 6. *Volumus enim vos & heredes vestros masculos de corpore vestro legitime evocantes Barones de Vescy existere.*

claus. 27
H. 6. M.
26. dorso.

Here was a special Clause of Creation to a Barony; but if the usual Writs, *Quatenus*, Writs of Summons, made none Barons out of Parliament, and there is not the least ground of conjecture, that such

such Writs were devis'd in the time of Henry the Third, it follows, That when Henry the Third Summon'd only his own Tenants to perform their Military Services, not to Parliament, and these were *Barones tenentes in Capite*, but there were other Barons omitted, that these Barons must have been such, by reason of their Freehold.

That an usual Writ, or Writs of Summons, made none Barons out of Parliament, appears very fully in the Case of *Thomas de Furnivall*, in the Court of Exchequer.

Thomas de Furnivall had been amerced Communis de Term
Sancti Hill
anno 19
Ed. 2. Rot.
pensis Rem.
Domini
Thes in
Scaccario.
Pro Tho-
nivall seni-
ore exoner-
ando. *tanquam Baro*. He pleads in discharge of his amercement, That he was no Baron, nor held by Barony, or part of a Barony, *Licet ipse Baro non sit, nec terram suam per Baroniam vel partem Baronie teneat, nihilominus idem Thomas pro quibusdam defaltis in quibusdam Curiis, &c. In eisdem Curiis tanquam Baro amerciatu fuit.*

Now according to Mr. Selden's Notion, he ought to have pleaded that he was no Baron, in that he neither held by Barony, nor had receiv'd or us'd to receive special Writs of Summons to Parliament.

But 'tis observable, that the only matter put in issue by the direction of the Court, was, Whether he held by Barony, or no, *Et quia Barones ante quam ulterius, &c. Volant certiorari super superius suggestis. Concordatum est quod inquiratur inde & quod Robertus de Nottingham Rememerator hujus Scaccarii assignetur ad capiend' inde inquis, &c. Et datus & dies prefato Thom. per Attornatum suum pred' hic à die Pasche in unum mensem. ad audiend' & recipiend' inde quod Cur. &c.*

There was an Inquisition directed into the several Counties, where he had Lands to know how he held them, and according as his Tenure appear'd to be, was he to receive Judgment upon his Plea; and 'tis certify'd, upon the Inquisitions taken, That he held not any Land *per Baronium vel partem Baronie*, and therefore according to the sense of the whole Court, though we find not the Judgment then given, *non fuit Baro.*

And yet this man had been call'd to Thirty Parliaments before the time of his Plea; and his Son, as I take it, was call'd to Seven in the life-time of his Father, *Thomas de Furnivall Sen. Summonitus fuit per breve ad Parl' Rot. Claus. 23 Ed. 1. m. 9. dorso. Rot. Claus. 23 Ed. 1. m. 3. d. 24. Ed. 1. m. 7. d. 25. m. 25. d. 27. m. 18.*

m. 18. *d.* 28. *m.* 16. 17. *d.* 28. *m.* 2, 3. *d.* 30. *m.* 7. *d.* 32. *m.* 2. *d.* 33. *m.* 21. *d.* 34. *m.* 2. *d.* 35. *m.* 13. *d.* Rot. Claus. 1 Ed. 2. *m.* 19. *d.* 1. *m.* 11. *d.* 1. *m.* 8. *d.* 2. *m.* 11. *d.* 3. *m.* 17. *d.* 3. *m.* 16. *d.* 5. *m.* 17. *d.* 5. *m.* 3. *d.* 6. *m.* 31. *d.* 6. *m.* 17. *d.* 6. *m.* 2. *d.* 7. *m.* 15. *d.* 8. *m.* 25. *d.* 8. *m.* 29. *d.* 9. *m.* 22. *d.* 11. *m.* 14. *d.* 11. *m.* 12. *d.* 11. *m.* 8. *d.* Thomas de Furnival, Jun. Rot. Claus. 12. *d.* 2. *m.* 29. *d.* 12. *m.* 11. *d.* 13. *m.* 13. *d.* 14. *m.* 23. *d.* 15. *m.* *d.* 16. *m.* 26. *d.* 17. *m.* 27. *d.*

This Great man was no Baron in the sense of the word *Baron* then appropriated, the several Writs of Summons had made him no Baron, and yet he was a Lord of Parliament, and since the King *dignatus est brevia Summonitionis ad eum dirigere*, according to Mr. Camden, he being before one of the multitude of Barons, the word *Baro* which was applicable to all the Nobility, the Free-holders in him, *pertinebat ad summum honorem*. Mr. Selden's last objection is this,

(3.) That old Author also used by the Learned Camden, speaks of Earls no otherwise than of Barons, as if some like exclusion had been of any of them also; than which nothing can be more advers to the known truth both of that Age, and all times, and even in that we have some Character of the slightness of his Authority, whosoever he were.

F f 4

This

Titles of
Honour.
fol. 590.

This I conceive can be of no great weight, for he might as well have said that Barons were never excluded before, and by the same consequence not then; for I know not how any man can prove, that Earls had more *Right* than Barons, in the most Honourable acceptation especially.

But this being then made a Law, 'tis not improbable, that the disposition of this Honour of receiving particular Writs of Summons to Parliament, might have been lodg'd in the breast of the King, who is the Fountain of Honour; nor is it likely that any Earl, but he that justly forfeited the Kings favour, would have been denied it; however, he were deprived of no natural Right. Since the 11th. of *Richard* the Second, indeed, the Nobility have had settled Rights by Patents, which are as so many constant Warrants for the Chancellor to issue out the Writs of Summons, *Ex delicto justitiæ*; with this agrees the great Antiquary, Sir *Henry Spelman*.

Glos. tit.
Barq.

Sic antiqua illa Baronum dignitas secessit in titularem & arbitrariam regioq; tandem diplomate idcirco dispensata est.

Upon the dissolution of the separate Court of Tenants, the Tenants still succeeding to that jurisdiction and preference

rence in the way of being call'd to the
 great Court, which they had in and to
 the less, without such a provision as Mr.
Camden takes notice of, I will grant, that
 the *Majores Barones* holding in chief, *ex* In charta
Johannis.
debito justitia, would have had right to
 special Summons, but the lesser Tenants
 had the same Right to a general Sum-
 mons; and the Right of being repre-
 sented, as properly concluded, the one
 as the other, unless where the King had
 exerted his Prerogative. But where the
 King *ex tantâ multitudine Baronum*, dif-
 fering in their circumstances, (some
 holding of him immediately, others of
 mean Lords, and his very Tenants being
 divided into two different Classes, of
Majores and *Minores*) advanc'd some to
 be of his particular Council in Parlia-
 ment. This, with submission, I take it,
 made them not Judges in Parliament, *eo*
nomine, because a Court may amerce its
 own Members, but Counts and Barons
 by *Magna Charta*, are not amerceable but
 by their Peers, and therefore none but
 their Peers could without their own con-
 sent be of the Court with them, which
 though they might be with consent, as
 to all Acts amongst themselves, still it
 would be a question how far they might
 without particular Patent or Writ crea-
 ting

ting them to such Honour ; act in that Station to the prejudice of others. That special Summons to Parliament, without a Seat there granted and settled by the King, gives no man Vote amongst those who now have Right to such Summons, appears, in that the Judges and Masters in Chancery have had the same Writs with the Lords, and yet are, and have been, but assistants to them, no Members of their House.

4. Infit.

The great Tenents in Chief, and others, in equal Circumstances, were *Pares* to one another, and if such an one was chose Knight of a Shire, though the Lord Coke says, the King could not grant a Writ to Superfede his coming that was so chose, because 'twas for the good of the Commonwealth ; yet he being look'd upon as one that ordinarily would be specially Summon'd, the King might superfede it ; and thus we find even before any settled Right by Patent.

claus. dors.
7 R. 2.
M. 32.
Titles of
Honour.
.609.

Rex Vicecomiti Surria salutem, quia ut accepimus tu Thomam Camoys Chivaler, qui Banneretus est sicut quam plures antecessorum suorum extiterint ad essendum. Unum militum venientium ad proximum Parliamentum nostrum pro Coomunitate Comitatus predicti de assensu ejusdem Comitatus elegisti, nos advertentes quod hujusmodi Banneretti,

retti, ante hac tempora in Milites Comitatus ratione alicujus Parlamenti eligi minime consueverunt, ipsum de officio Militis ad dictum Parlamentum pro communitate Com' predicti venturi exonerari volumus, &c. When Tenants in Chief, or eorum Pares, were call'd by special Writ, they very properly exercised the same jurisdiction which Tenants did before in their separate Court.

In the 5th. of Richard the Second, many having refused attendance, and not owning themselves liable to amercements; because of absence, if Tenure laid not a special obligation upon them, comes an Act of Parliament which makes it penal to refuse, or rather delares, that the Law was so of old.

All singular Persons and Communalities. 5 R. 2. cap. 4. Anno 1381.
 which from henceforth shall have the Summons of Parliament, shall come from henceforth to the Parliament, in the manner as they be bounden to do, and hath been accustomed, within the Realm of England of old times, and every Person of the same Realm, which from henceforth shall have the said Summons (be he Arch-Bishop, Bishop, Abbot, Prior, Duke, Earl, Baron, Banneret, Knight of the Shire, Citizens of City, Burgeis of Burgh, or other singular Person, or Commonalty, do absent himself, and

and come not at the said Summons, except he may reasonably and honestly excuse himself to our said Sovereign Lord the King, he shall be amerced, and otherwise punished, as of old times hath been used to be done in the said Realm) in the said Case.

This shews that of old time, they who were Summon'd by the King, or chose by the People, ought to come to Parliament; but this being before any Patent, or Writ of Creation to the Dignity of Peer, and to a Seat in Parliament, supposes no obligation upon the King to give any special Summons; indeed where he had granted Charters of exemptions from common Summons, there he had oblig'd himself (if he would have them oblig'd by what pass'd) to give special Summons, were it not that they might have been chose in the Counties particularly, (which alters the case from what it were, if every body came, or might come in their own Persons, some by special, others by general Summon's) but this exemption, and particular Summon's after it, made none Peers that they found not so, but they that came were to come as *they were Bonden, and in such manner, as had been accustomed of old.* Which is pregnant with a negative, as it it were *in such manner, and no other Manner, Quality, or Degree :*

Degree: and thus they us'd that to come as assistants to the Lords, continue even at this day to come in the same manner, and no otherwise, notwithstanding particular Writs of Summons *eodem modo* as to the Lords of Parliament.

This is further observable, that in the forecited Statute, and Records, *Ban- nerts* are spoken of as above Knights of the Shire, and these were certainly some of the *Pares Baronum* which often occur to us. If these receiv'd their Summons to Parliament, it seems, *as it had been of old accustomed*, they were to have Voices with the Barons.

It may be urg'd, That they which held by Barony, and their Peers, *Pares Baronum*, were by the Law exempted from being of Common Juries, because they were Lords of Parliament: And therefore they were to come of course and right. To which it may be answered, That is a privilege above the rest of their Fellow Subjects, to be own'd by them, as being in common intendment likely to be call'd to Parliament, and therefore so accounted by the courtesy of *England*; but what do's this signifie to bind the King? who is above the reach of an Act of Parliament, unless particularly nam'd,

Vid. Prin-
first part
of *Parl*
Writs. p.
251.

Tides of
Honour.
fol. 608.
Rot. Parl.
1 H. 4. m.
16. n. 59.
ib. cited,
8cc.

Countess of
Rutland's
Case, *Coke*
6. Rep.
fol. 53.

But

Standish's
Case.
Kelloways
Rep. 184.6.
Selden ad
Eadm.

But for this a resolution by all the Judges of *England* in the Reign of *Hen.* the 8th. is a full Authority, where 'Tis adjudged; that the King may hold his Parliament without such Lords as come only upon the account of their *Possessions*. The same in effect Mr. *Seiden* tells us, in his Notes upon *Eadmerus*, Neque eos (speaking of *Barones*) duntaxat ut hodie significare, quibus peculiaris ordinum Comitibus locus est, sed universos qui saltem beatiore regia munificentia &c. Latifundia possidebant. So that he was of opinion here, that there were several who had great Estates of the immediate grant of the Crown, who yet had no Seat in the House of Lords.

I would not be thought to assert any thing dogmatically, I only offer by way of learning, something which perhaps will be look'd on as Paradoxes at the least. I divide not my matter into Heads and Positions, because I run counter to the sense of many great names: and the direct opposing such in *Thesis* would be invidious, and gain a disadvantage to the authorities I produce.

If any body will take the pains to shew me, by authentick proofs and warrantable reasons, that all or most of the Records or Histories by me cited, or others

others not occurring to me, ought to be taken in a sense contrary to what has appeared to me, I shall thankfully receive and acknowledg his instructions; but till then I must crave pardon if I cannot swallow or digest any Learned Modern Antiquarie's bare *ipse dixit*, where I find the best of our Historians and a Series of Records in my Judgment diametrically opposing and contradicting their Positions and Assertions

I am aware, that besides the many slips of an hasty Pen, and the weakness perhaps of several of the inferences, which amongst some avocations may have pass'd neglected; There is a material Objection against the foundation of the whole, which is the general agreement of Records and Histories, that till the 48th or 49th of Henry the Third, all Proprietors of Land came to the Great Council without any settled exclusion, when yet we many times find that the Councils were held in Churches, or Halls, and yet at those times 'tis said that the *Populus* were there as if the Great Men were the standing Representative Body of the Nation, and answer'd for all the People, the Freeholders of the Nation.

To which I answer, (according to the *modus tenendi Synodos*, which I may apply
to

Spelm. Con.
2. Vol.
fol. 1.

to the civil Councils) That the *probi homines, or bone conversationis* came sometimes in their own Persons, and when they agreed to it, which was no abridgment of their personal Right, they came by representation *en electione*, and every one was there himself virtually by his Deputy, but they often met in vast Bodies, and in capacious places, both in the Saxon times, and after *William the First* obtained the Imperial Crown.

The whole body of Proprietors were assembled at *Rune-med* between *Stanes* and *Windsor* at the passing of King *John's* Charter; and if we believe *Matth. Westminster*, it was not unusual for the Kings of *England* long before King *John's* time, at that very place to meet their People to treat of the Affairs of the Kingdom.

Mat. westm.
fol. 273.
Anno 1215.

Maximus Tractatus habebatur inter Regem et Barones de pace Regni inter Stanes & Windforam in prato quod dicitur Rune-med quod interpretatur pratum Conoiliu eo quod ab antiquis temporibus ibi de pace regni sepius consilia tractabantur.

This shews the usual places of Assembling to have been large enough for all the people, which are in so many Records and Histories Printed and in Manuscript, said to have been present at the Great or General Councils; I shall conclude

clude with one Instance of the Parties present at such a Council, which is deliver'd with sufficient perspicuity.

Anselm in one of his disputes with *Henry* the First, desires the debate may be adjourn'd till the *Easter* following. *Eadmerus*,
f. 70.

Differantur hac si placet usque in Pascha ut audito Episcoporum, regniq; Primatum consilio, qui modo non assunt respondeam hinc.

Upon this *Anselm* comes to the Court at *Easter*, *Igitur in Pascha Curiam venit regni ingenuitatem presens consulit, Communi consilii vocem accepit, &c.*

Here the Council *Episcoporum et Primatum*, to which he referr'd himself, was reciprocal with the *ingenuitas regni*, that is, as Sir *Henry Spelman* shews us, the *liberi et legales homines*, the good honest Freeholders, some of which were no better than Plebeians. *Glos. tit.*
Ingenius.

And therefore this authority alone, especially as 'tis strengthened by those others to the same purpose, which I have cited *absq; dolo et malo ingenio*, evince to me, That he or they who put out the Second Part of Sir *Henry Spelman's Glossary*, did not do right to his Memory, in representing him affirming, That the *plebs*, the *ingenuitas*, or *liberi et legales homines*, as he himself tells us the word

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ingenius,

ingeniis, has anciently been us'd, are no where amongst the several Councils which he had read of, mention'd to have been there, from the entrance of *William* the First, to the end of *Henry* the Third. The words to this purpose which I conceive are put upon him, are these,

Glos. 2d.
Part, tit.
Parlamente,
ed.
Lond. Anno
1664.

*Sine ut fodes dicam collegisse me centenas
reor comitiorum edictiones (tenoresq; plurimorum)
ab ingressu Gulielmii ad excessum
Henrici 3. existentium nec in tantâ multitudine
de plebe uspiam reperisse aliquid.*

Indeed notice being taken of those Councils where were *Optimates et Barones totius Angliæ*, and of that famous Assembly at *Salisbury-Plain* of the *Barones et Vicecomites cum suis Militibus*, in pursuance of the Summons of *William* the First, the positiveness of the assertion is restrain'd with a *ni in his dilituerit*. But what doubt can be made of those words, whereby they are expressly mention'd, and that according to the true *Sir Henry Spelman*, I am not yet a ware of.

FINIS.

ERRATA

Page 3. l. 16. r. *Tzurick* for *Tours* : p. 5. margin. r. *contemporaneo*
 p. 8. l. 12. for *William* read *Hugh* : p. 9. l. 9. r. *Attendance* : p.
 10. l. 7. add *laici* before *omnes* : p. 12. l. 29. joyn *a* to *par* : p.
 17. l. 4. r. *fuerat* : p. 25. l. 6. add *est de* before *antiquo* : l. 7. dele
de : p. 27. marg. r. *Hil.* for *Mich.* p. 35. l. 3. add *2* before *tota* : p.
 40. l. 22. r. *illuc* : l. 19. r. *Knight* for *Knights* : p. 45. last l. r. *antequam* :
 47. l. 4. dele Comma after *Sheriffs* : l. 15. r. *vias* : l. 19. dele *s* after *Knight* :
 53. l. 28. make a Comma after *Kings* title : l. 29. r. *election* : p.
 60. l. 28. add *is* after *that* : p. 63. l. 18. r. of *for in* : p. 64. l. 14.
 put a Comma after *only* : p. 65. l. 15. r. *'twas* : p. 66. l. 7. put a Comma after
ability : l. 16. after *Londoners* make a Comma : so after *Citizens* : l. 11.
 put a Comma after *amongst them* : p. 68. l. 14. r. *Matilda* : p. 206. l. 2.
plectendum : l. 3. r. *judicare* : p. 217. l. 11. r. *assuerunt* : p. 228. l. 9.
Doveram : p. 237. l. 7. add *the* before *free Customs* : l. 8. dele *the* : 2d. Sheet
 p. 237. l. 13. r. *militibus* : p. 238. l. 9. r. *tenants us'd* : p. 240. l. 20.
de scuto : l. 28. r. *the* for *their* : p. 241. l. 11. dele *s* after *acquaint* :
 22. r. r. *cord* : p. 245. l. 2. r. *negotium* : p. 246. l. 5. r. *retroactis* :
 247. l. 23. r. *his* instead of *this* : p. 251. margin. r. *proprietaryis* : p.
 255. r. *Baro* : l. 21. put a Comma after *Freeholders* : p. 261. l. 1. r.
at before us'd : p. 262. l. 20. add *s* to *thing* : p. 265. l. 14. add *s* to
communi.

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A Catalogue of some Books, lately Printed for Tho. Bassett at the George in Fleet-street.

AN Institution of General History, or the History of the World in two Volumes in folio, by Dr. William Howel, Chancellor of Lincoln. Printed 1680.

Historical Collections, being an exact Account of the Proceedings of the four last Parliaments of the Renowned Princess Queen Elizabeth, containing the Journals of Both Houses, with their several Speeches, Arguments, Motions, &c. in folio, writ by Hayward Townshend Esq; then a Member of Parliament, Printed 1680.

The Antient Right of the Commons of England Asserted, or a Discourse Proving by Records, and the best Historians, That the Commons of England were ever an Essential part of Parliament, By William Petre of the Inner Temple Esq;

Of the French Monarchy, and Absolute Power, and also a Treatise of the Three States, and their Power, deduced from the most Authentick Histories, for above 1200 Years, and digested this latter, by Mat. Zampini de Recanat. L. L. D.

The Constitution of Parliaments in England, deduced from the time of King Edward the Second, Illustrated by King Charles the Second, in his Parliament Summon'd the 18th. Febr. 1662. and Dissolv'd the 14th. Jan. 1672. with an Appendix of its Sessions, in Oct.

The Politicks of France, by Monsieur P. H. Marquis of C. with Reflections on the 4th. and 5th. Chapters: wherein he censures the Roman Clergy, and the Huguenots; by the Sir P Ormegregny.

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Le Beau Pleadur, a Book of Entries containing *Declarations*, *Informations*, and other select and approved *Pleadings*, with *Special Verdicts*, and *Demurrers*, in most *Actions real*, *Personal*, and *mixt*, which have been argued, and adjudged in the Courts at *Westminster*, together with faithful references to the most Authentick printed Law books now extant, where the Cases of these Entries are reported, and a more Copious and useful Table than hath been hitherto Printed in any book of Entries, by the Reverend Sir *Humphrey Winch* Knight, sometime one of the Justices of the Court of *Common Pleas*.

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